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ESSAY

The Emerging Firearms Hypocrisy of *Terry*: The Fifth Circuit in *United States v. Wilson*

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In July 2025, the Fifth Circuit held that a police officer's suspicion that an individual is carrying a concealed firearm, because it is a presumptively lawful activity, cannot be the sole basis for an investigative stop.[1] Setting aside for the moment the national trend toward deregulating firearms, *United States v. Wilson* is remarkable because of how much otherwise-legal activity courts find sufficient to trigger the reasonable suspicion required for a police stop.

Emerging from this backdrop, *Wilson* elevates the status of gun possession over other legal activities, such as an individual's right to associate with certain people, exist in public, avoid police officers, or act nervously around them. As *New York State Rifle & Pistol Association v. Bruen*[2] broadly protects robust Second Amendment interpretations, *Wilson* exposes the tension between expanding public carry and Fourth Amendment precedents saying other presumptively legal activities can establish reasonable suspicion. The Fifth Circuit creates a huge carveout for gun possession, which is astonishing given the Court's repeated holdings that other presumptively legal and even innocuous activities can constitute reasonable suspicion. And despite this development, the flaws of *Terry v. Ohio*,[3] enabling the persistent post-hoc justification of police interventions, make people of color particularly vulnerable to police overreach.

After summarizing *Terry*'s primary pathologies, this Essay presents the facts and arguments in *United States v. Wilson* as emblematic of these concerns. The Essay then describes the impact of an increasingly robust Second Amendment interpretation on the Fourth Amendment's reasonable suspicion

1. United States v. Wilson, 143 F.4th 647 (5th Cir. 2025).
2. 142 S. Ct. 2111 (2022).
3. 392 U.S. 1 (1968).

standard. The Essay asserts that *Wilson* elevates licensed gun possession over other presumptively lawful behaviors in the reasonable suspicion calculus but then backfills requisite suspicion through a defendant's social association and arrest history. Finally, the Essay argues that establishing a "firearm exceptionalism" in reasonable suspicion calculus will only further entrench *Terry*'s problematic deference to racialized policing.

I. Reasonable Suspicion's Ubiquitous Pathologies

Since 1968, the Supreme Court has required police to have reasonable suspicion, based on "specific and articulable facts," that criminal activity is afoot before conducting an investigatory stop.[4] To comply with the Fourth Amendment, such a *Terry* stop requires a "particularized and objective basis" to support reasonable suspicion that the person is, or is about to be, engaged in criminal activity.[5] A "frisk" for weapons requires more: reasonable suspicion that the individual is engaged in a crime and poses a danger to police officers, often because of suspicion that they have a weapon.[6]

Thirty years later, the Court confirmed that tips about firearms, like tips about other criminal activities, need indicia of reliability and particularity to support reasonable suspicion.[7] In *Florida v. J.L.*, Florida and the United States as *amicus* urged the Court to modify *Terry* to include a "firearm exception," whereby "a tip alleging an illegal gun would justify a stop and frisk" even where the allegation would not constitute reasonable suspicion.[8] The Court denied this request, explaining that an "automatic firearm exception to our established reliability analysis . . . would enable any person seeking to harass another to set in motion an intrusive, embarrassing police search of the targeted person simply by placing an anonymous call falsely reporting the target's unlawful carriage of a gun."[9]

With this doctrinal foundation, it is critical to recognize the selection bias through which precedent develops in order to understand *Terry*'s flaws.

4. *Id.* at 21, 30.

5. United States v. Arvizu, 534 U.S. 266, 273 (2002) (quoting United States v. Cortez, 449 U.S. 411, 417-18 (1981)).

6. *See* Arizona v. Johnson, 555 U.S. 323, 326-28 (2009) (explaining that to justify a pat down of a driver or passenger during a traffic stop, as in a pedestrian stop, police need reashonable suspicion that the individual subject to the frisk is "armed and dangerous"); *Terry*, 392 U.S. at 27.

7. Florida v. J.L., 529 U.S. 266, 270, 272 (2000); *see* Speten v. State, 185 P.3d 25, 33 (Wyo. 2008) (noting that there is no "'freestanding' right to search based solely upon reasonable suspicion of the presence of weapons").

8. *J.L.*, 529 U.S. at 272.

9. *Id.*

Because of the nature of criminal appeals, the only police-citizen interactions scrutinized by courts are those where contraband has been found, and some criminal prosecution ensued. This selection bias makes it "easy to forget that [the Court's] interpretations of [Fourth Amendment] rights apply to the innocent and the guilty alike."[10] It bolsters the perception of police infallibility because courts do not review the hundreds of daily searches where criminal charges do not arise.

Of the many critiques levied by scholars, advocates, and judges against the reasonable suspicion standard, a few are most relevant to this discussion.[11]

First, the Court has interpreted the Fourth Amendment generally in a manner that gives police discretion to employ a racialized selection process.[12] *Terry*'s flexible standard empowers "police officers to engage African Americans with little or no evidence of criminal wrongdoing."[13]

Second, since the Court held in *Illinois v. Wardlow* that an individual's presence in a "high-crime area" is relevant but "not enough to support a reasonable, particularized suspicion,"[14] lower courts have struggled with what

10. United States v. Sokolow, 490 U.S. 1, 11 (1989) (Marshall, J., dissenting).

11. Judges critique *Terry*'s ambiguity and the deference it affords police. *See, e.g.*, Terry v. Ohio, 392 U.S. 1, 36 (1968) (Douglas, J., dissenting) ("We hold today that the police have greater authority to make a 'seizure' and conduct a 'search' than a judge has to authorize such action."). Scholars criticize the foundation underlying police claims of professional judgment, including limited training, subjectivity, and reliance on hunches, as opposed to actual data. *See* Ben Grunwald & Jeffrey Fagan, *The End of Intuition-Based High-Crime Areas*, 107 CALIF. L. REV. 345, 350-52 (2019) (using empirical evidence to show that police reliance on "high crime areas" to support reasonable suspicion for intervention was not supported by crime data); L. Song Richardson, *Cognitive Bias, Police Character, and the Fourth Amendment*, 44 ARIZ. ST. L.J. 267, 268 (2012) (suggesting a reframing of Fourth Amendment doctrine to incentivize police to diminish the impact of cognitive bias on judgments of suspicion); Tracey Maclin, Terry v. Ohio*'s Fourth Amendment Legacy: Black Men and Police Discretion*, 72 ST. JOHN'S L. REV. 1271, 1299-1300 (1998) (arguing that when police safety is weighed against the freedom guaranteed by the Fourth Amendment, judges will always defer to police testimony); Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 HARV. L. REV. 1995, 1997-98 (2017) (reexamining judicial reliance on police expertise in various settings, including criminal trials).

12. *See* Daniel S. Harawa, *Whitewashing the Fourth Amendment*, 111 GEO. L. J. 923, 926-29 (2022); Daniel S. Harawa, *Coloring in the Fourth Amendment*, 137 HARV. L. REV. 1533, 1535-40 (2024) (arguing that race is relevant to a Fourth Amendment seizure especially given the doctrine's implicit and explicit consideration of race elsewhere); Brandon Hasbrouck, *The Unconstitutional Police*, 56 HARV. C.R.-C.L. L. REV. 239, 251 (2021) (arguing that Fourth Amendment jurisprudence "excuses" police racism and then "enshrines it within the limits of constitutional protections").

13. Devon W. Carbado, *From Stop and Frisk to Shoot and Kill:* Terry v. Ohio*'s Pathway to Police Violence*, 64 UCLA L. REV. 1508, 1513, 1551 (2017) ("[T]he *Terry* regime, and Fourth Amendment law more generally, provides police officers with an opportunity to target African Americans without violating the law.").

14. 528 U.S. 119, 124 (2000).

is enough to justify a *Terry* stop in a "high-crime" area. Permitting this generalized factor to weigh in the reasonable suspicion calculus undermines the particularity requirement and subjects racial minorities to invasive, unconstitutional searches.[15]

Third, since *Terry*, courts have allowed police identification of vague and innocuous movements to evidence suspiciousness supporting reasonable suspicion. Such behaviors include police observation of individuals acting "fidgety," engaging in "furtive movements," and fleeing from police.[16] As the Seventh Circuit has acknowledged, "[w]hether you stand still or move, drive above, below, or at the speed limit, you will be described by the police as acting suspiciously should they wish to stop or arrest you."[17]

Recently, police have used the vague and racially loaded term "blading"—which encompasses minor movements such as turning one's body slightly away from officers—when evaluating the presence of reasonable suspicion. This term, like others previously listed, provides a false veil of police expertise to which courts defer in reasonable suspicion determinations.[18] Meanwhile, in the decades since *Terry*, abundant research has confirmed that police falsely

15. *See* United States v. Caruthers, 458 F.3d 459, 467 (6th Cir. 2006) ("[L]abeling an area 'high-crime' raises special concerns of racial, ethnic, and socioeconomic profiling."), *abrogated on other grounds by* Mathis v. United States, 579 U.S. 500, 513 (2016); United States v. Wright, 485 F.3d 45, 53-54 (1st Cir. 2007) (holding that in order for a defendant's location in a "high crime area" to contribute to reasonable suspicion, the government must prove a nexus between the type of crime prevalent in the area and that suspected of the defendant). Elise Boddie and Monica Bell document the oppressive community impact of police ability to misuse high-crime area designation in highly policed, majority-minority communities. Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2057 (2017); Elise C. Boddie, *Racially Territorial Policing in Black Neighborhoods*, 89 U. CHI. L. REV. 477, 497 (2022).

16. *See* Floyd v. City of New York, 959 F. Supp. 2d 540, 561 (S.D.N.Y. 2013) (describing one officer's testimony that "furtive movement is a very broad concept," including a person "changing direction," "walking in a certain way," "[a]cting a little suspicious," "making a movement that is not regular," "being 'very fidgety,'" "going in and out of his pocket," "going in and out of a location," "looking back and forth constantly," "looking over their shoulder," "adjusting their hip or their belt," "moving in and out of a car too quickly," "[t]urning a part of their body away from you," "[g]rabbing at a certain pocket or something at their waist," "getting a little nervous, maybe shaking," and "*stutter[ing]*" (alterations and emphasis in original)); People v. Brown, 716 N.Y.S.2d 56, 57 (N.Y. App. Div. 2000) (noting that the officer noticed the defendant acting in a "furtive manner" while walking quickly away).

17. United States v. Broomfield, 417 F.3d 654, 655 (7th Cir. 2005).

18. *See* Aliza Hochman Bloom, *Whack-a-Mole Reasonable Suspicion*, 112 CALIF. L. REV. 1129, 1134-35, 1153-65 (2024) [hereinafter *Whack-a-Mole*] (suggesting a reasonable suspicion pattern "whereby courts rely on a factor; police increasingly cite that factor as support for their interventions; scholars, and then some courts, recognize the factor's problematic features; its usage slowly wanes; and another term takes its place").

associate Blackness and criminality, profoundly impacting how they interpret the behavior of Black men in particular.[19] Racial bias compounds problematic reliance on legal behaviors in a court's post-hoc analysis of *Terry* stops.

Fourth, scholars explain that associational suspicion dominates modern pedestrian policing, surfacing in contexts where the requirement of individualized suspicion has been ignored and individuals are deemed suspicious based on the actions and identities of the company they keep.[20] New social science reveals significant racial bias in the degree to which actors *perceive* people to be acting alone versus acting in a group.[21] Prevalent police reliance on suspicious association is compounded by racialized assumptions about social connection.

This Essay now turns to the facts of *Wilson*, a case emblematic of the problematic ways that police and the courts establish and affirm reasonable suspicion.

II. *Wilson*: The Facts

On March 16, 2022, law enforcement went to Damion Wilson's apartment in Metairie, Louisiana, looking for suspected criminal Malik Fernandez.[22] As Deputy U.S. Marshal Michael Atkins approached Mr. Wilson, Atkins noticed a

19. *See* I. Bennett Capers, *Rethinking the Fourth Amendment: Race, Citizenship, and the Equality Principle*, 46 HARV. C.R.-C.L. L. REV. 1, 14-17 (2011) (detailing the extent of racialized policing permitted by current interpretation of the Fourth Amendment); *see generally* Elizabeth A. Gaynes, *The Urban Criminal Justice System: Where Young + Black + Male = Probable Cause*, 20 FORDHAM URB. L.J. 621 (1993) (explaining how the criminal justice system disproportionately targets African American young men); ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA (2016) (tracing the rise of mass incarceration from the social welfare programs during President Johnson's "Great Society"); KHALIL GIBRAN MUHAMMAD, THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA (2019) (excavating the contributory role of social science to the myth of Black criminality).

20. *See generally* Aliza Hochman Bloom, *Suspicion by Association*, 68 ARIZ. L. REV. (forthcoming 2026) (on file with author) [hereinafter *Suspicion*] (presenting contexts where police rely on the behavior of a person's companions to justify interventions, arguing that such interpretation is antithetical to Fourth Amendment doctrine).

21. Decision makers are more likely to infer group liability in cases involving defendants of color, yet more likely to treat white defendants as individuals. G. Ben Cohen, Justin D. Levinson & Koichi Hioki, *Racial Bias, Accomplice Liability, and The Felony Murder Rule: A National Empirical Study*, 101 DEN. L. REV. 65, 73, 108 (2023) ("Participants were significantly more likely to quickly group together Black and Latino names with words associated with groups, such as 'group, pack, crew, them, crowd, folks, bunch,' and white faces with individuality, such as 'individual, self, one, solo, single, somebody, character.'").

22. Appellant's Brief at 4, 8, United States v. Wilson, 143 F.4th 647 (2025) (No. 23-30777), 2024 WL 3966066.

"bulge in [Mr. Wilson's] waist area" that he believed was a concealed firearm.[23] Atkins and other federal officers ordered Mr. Wilson to stop; Mr. Wilson complied; agents asked Mr. Wilson if he was armed and Mr. Wilson confirmed that he was.[24] While handcuffing Mr. Wilson, Deputy Atkins asked if he had a concealed weapons permit—Mr. Wilson "admitted that he did not."[25]

At the time of this stop, Louisiana prohibited concealed carry of firearms without a permit, but the state's "shall issue" permit regime had minimal statutory limitations.[26]

Moving to suppress the physical evidence seized and statements made to police during their interaction, Mr. Wilson argued that possession of a concealed firearm does not, by itself, establish the reasonable suspicion of criminal activity required by *Terry*.[27] The district court disagreed, finding that Deputy Atkins had reasonable suspicion that Mr. Wilson was carrying a concealed firearm; this suspicion justified the *Terry* stop because carrying a firearm was, at the time of the stop, "presumptively unlawful" under Louisiana law.[28]

III. Should Possession of a Concealed Weapon Justify A *Terry* Stop?

Mr. Wilson's subsequent appeal presented an issue of first impression for the Fifth Circuit—whether suspicion of possession of a concealed firearm constitutes reasonable suspicion. He argued that "the mere presence of a concealed weapon, without specific and articulable facts suggesting that the weapon was owned *unlawfully*," does not supply reasonable suspicion of criminal activity, particularly in Louisiana, a state "that broadly issues concealed carry permits."[29] Instead, possessing a firearm in public is a

23. *Wilson*, 143 F.4th at 651.

24. *Id.* at 651-52.

25. *Id.*

26. LA. STAT. ANN. § 40:1379.3(C) (2021); *see Wilson*, 143 F.4th at 652 n.1 (noting that "Louisiana has since adopted a permitless concealed carry scheme").

27. *See* Appellant's Brief, *supra* note 22, at 3-5, 22 (setting forth a similar argument on appeal). Deputy Atkins testified that the seizure of Mr. Wilson was based entirely on his observation of "a bulge in Wilson's waist area" that appeared to be a "hard object" which he believed was a concealed weapon. *Id.* at 22.

28. United States v. Wilson, No. 22-92, 2023 WL 3601590, at *5 (E.D. La. May 23, 2023).

29. Appellant's Brief, *supra* note 22, at 22-23 (citing United States v. Cooper, 43 F.3d 140, 143, 147 n.9 (5th Cir. 1995)); United States v. Wright, 582 F.3d 199, 211-12 (1st Cir. 2009) ("The object clipped to Wright's pocket was 'heavy,' but the weight of the contents of Wright's pocket does not support an inference that the pocket contains a *weapon*, as opposed to some other object.").

constitutionally protected activity and carrying a concealed firearm with a permit is lawful in Louisiana.[30]

Some criminal defendants and advocates have likewise leveraged a robust Second Amendment interpretation, believing it would benefit overly policed and marginalized communities, while others have been more cautious. The briefing in recent landmark Second Amendment case *New York State Rifle & Pistol Association v. Bruen* took conflicting views on the effects of firearm regulation on communities of color. A coalition of Black public defenders argued that New York's firearm licensing system led to racially disproportionate prosecutions, with "virtually all of [the people] whom New York prosecutes for exercising their Second Amendment rights [being] Black or Hispanic."[31] Meanwhile, others informed the Court that Black Americans are more likely to die from gun violence, and eliminating gun regulation could lead to more gun violence including racialized violence.[32] In the immediate aftermath of *Bruen*'s decision that New York's firearm laws violated the Second Amendment,[33] Daniel Harawa observed the weaponization of race, noting how the Court expanded the scope of the Second Amendment right while refusing to address its Fourth Amendment policing doctrines that make public carry particularly precarious for Black Americans.[34] In fact, Harawa predicted an emerging gun hypocrisy, suggesting that "if a Black person *does* decide to carry a gun as freely as a white person, it will be at their peril."[35] Laura Abelson

30. Appellant's Brief, *supra* note 22, at 25 ("In other words, it is perfectly legal to carry a concealed weapon in Louisiana so long as one has a permit to do so—a permit that must be issued to any person who meets the statutory requirements because Louisiana is a 'shall issue' concealed carry permit state.") (citing LA. STAT. ANN. § 40:1379.3(A)(1) (2024)).

31. Brief of the Black Att'ys of Legal Aid, et al., as Amici Curiae in Support of Petitioners at 5, New York State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111 (2022) (No. 20-843). The public defenders explained that Black people accounted for 78% of all New York felony gun possession cases, despite comprising just 18% of New York's population. *Id.* at 14. As Daniel Harawa explains, despite the media calling public defender support for the *Bruen* petitioners "unlikely," it made sense. Daniel S. Harawa, *The Second Amendment's Racial Justice Complexities*, 108 MINN. L. REV. 3225, 3232-33 (2024).

32. Brief of the NAACP Legal Def. & Educ. Fund, Inc., and the Nat'l Urb. League as Amici Curiae in Support of Respondents at 16-19, *Bruen*, 142 S. Ct. 2111 (No. 20-843).

33. *Bruen*, 142 S. Ct. at 2122, 2126 (holding that for a law regulating firearms to be constitutional, it must be "consistent with this Nation's historical tradition of firearm regulation").

34. Daniel S. Harawa, NYSRPA v. Bruen*: Weaponizing Race*, 20 OHIO ST. J. CRIM. L. 163, 173-77 (2023) (arguing that the post-*Bruen* legal landscape would perpetuate racially disparate policing and police violence). Harawa explains that the Court drew upon the narrative that gun control was racist, without engaging with the consequences of a robust Second Amendment for Black Americans or contemplating how expanded gun ownership would be particularly dangerous for Black people. *Id.*

35. *Id.* at 165.

explains that although the *Bruen* petitioner prevailed, developing law since *Bruen* shows the reverberating inequality in gun prosecutions.[36] Courts have applied the "historical tradition" test to nullify many state firearms regulations, except those that prohibit individuals with prior convictions from possessing a firearm.[37] This portends continued inequality in when and how firearms offenses are prosecuted.

Although criminal defendants challenging gun prosecutions have successfully used *Bruen*,[38] the Court revised its test in *United States v. Rahimi*, clarifying that a regulation is constitutional if it is "consistent with the principles that underpin our regulatory tradition," and upholding Mr. Rahimi's conviction under 18 U.S.C. § 922(g)(8).[39] The Court did not consider the vast racial disparity in prosecuting this federal statute, or in prosecuting gun crimes generally.[40] Harawa suggests that *Rahimi* confirmed that the Court's "maximalist view of the Second Amendment has at least one endpoint—certain criminal defendants."[41]

This perspective is seen in *Wilson.* While Louisiana law required a permit to carry a concealed firearm at the time of Mr. Wilson's stop, the state's requirements were minimal.[42] Mr. Wilson argued that permitting a *Terry* stop based on possession of a concealed firearm—when state law provides for lawful concealed carry—conflicted with the Supreme Court's jurisprudence because it sanctions infringement of the Second Amendment right by causing automatic loss of one's Fourth Amendment right to be free from unreasonable search and

36. Laura G. Abelson, *Reevaluating Felon-In-Possession Law After* Bruen *and the War on Drugs*, 15 U.C. IRVINE L. REV. (forthcoming 2025) (manuscript at 49-51).

37. Abelson explores how the rollback of firearm regulation has been applied unevenly, rendering most Americans legally entitled to possess firearms, but the "segment left behind by prior over-criminalization waves—[is] punished with increasing severity for the exact same conduct." *Id.* (manuscript at 4).

38. *See, e.g.*, United States v. Quiroz, 629 F. Supp. 3d 511, 527 (W.D. Tex. 2022) (dismissing a charge for buying a gun while under indictment); United States v. Holden, 638 F. Supp. 3d 931, 940-41 (N.D. Ind. 2022) (dismissing an indictment for making false statements to a gun dealer).

39. United States v. Rahimi, 144 S. Ct. 1889, 1898, 1901 (2024) (concluding that the "prohibition on the possession of firearms by those found by a court to present a threat to others fits neatly within the tradition").

40. Daniel S. Harawa, *Between a Rock and a Gun*, 134 YALE L.J.F. 100, 103-05 (2024) (summarizing racial justice narratives on both sides of *Rahimi,* which Harawa argues "pitted the Roberts Court's love for guns against its disdain for criminal defendants").

41. *Id.* at 124.

42. *In re* J.M., 144 So. 3d 853, 865-66 (La. 2014). Wilson emphasized that Louisiana was a "shall issue" concealed carry permit state, meaning that a permit must be issued to any person who meets the statutory requirements, which are "not burdensome, relating primarily to age, mental fitness, immigration status, and criminal history." Appellant's Brief, *supra* note 22, at 25 (citing LA. STAT. ANN. § 40:1379.1.3(A)(1) (2024)).

seizure.[43] Multiple circuits have held that the mere fact that a person is carrying a concealed firearm cannot give rise to the reasonable suspicion of criminal activity required by *Terry*.[44] Mr. Wilson analogized carrying a firearm to driving a car, which is heavily regulated and requires a license.[45] Although driving is "subject to state regulation," an individual does not lose their reasonable expectation of privacy when driving.[46] And, Mr. Wilson insisted, carrying firearms, unlike driving cars, is protected by the Second Amendment.[47] In sum, Mr. Wilson argued that at the time of the stop, officers lacked information suggesting that he did not have or was statutorily ineligible for a carry permit. He was stopped solely on suspicion that he was engaged in a licensed activity, violating the Fourth Amendment and impinging on his Second Amendment rights.

Meanwhile, the government insisted that an officer's suspicion that Mr. Wilson was carrying a concealed weapon supplied reasonable suspicion for the stop.[48] Carrying a concealed firearm was "presumptively unlawful" in Louisiana at the time of the stop.[49] And even if Mr. Wilson's gun ownership was legal, the government argued precisely what scholars loathe about

43. Appellant's Brief, *supra* note 22, at 38-40; *cf.* New York State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2126 (2022) ("Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" (quoting Konigsberg v. State Bar of Cal., 366 U.S. 36, 50 n.10 (1961))); *Rahimi*, 144 S. Ct. at 1898 (2024) ("As we explained in *Bruen*, the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition.").

44. *See* Bellotte v. Edwards, 629 F.3d 415, 423 (4th Cir. 2011) ("It should go without saying that carrying a concealed weapon pursuant to a valid concealed carry permit is a lawful act."). The Third and Ninth Circuits have held that "possession of a concealed firearm does not provide reasonable suspicion for a *Terry* stop when concealed carry is broadly allowed under state law," such as with a "shall issue" regime. Appellant's Brief, *supra* note 22, at 26-27 (citing United States v. Ubiles, 224 F.3d 213, 214, 217-18 (3d Cir. 2000); and United States v. Brown, 925 F.3d 1150, 1153-54 (9th Cir. 2019) (finding unlawful a stop based on concealed handgun possession and explaining that concealed carry is "presumptively lawful" in Washington)). Other circuits disagree, finding that a *Terry* stop based on possession of a concealed firearm is constitutional where state law places the burden on a defendant to prove the *absence of a license* as an element of the crime. United States v. Lewis, 674 F.3d 1298, 1304-06 (11th Cir. 2012); United States v. Pope, 910 F.3d 413, 415-16 (8th Cir. 2018).

45. Appellant's Brief, *supra* note 22, at 33 (citing Delaware v. Prouse, 440 U.S. 648, 653-54 (1979) (holding that officers violate the Fourth Amendment if they pull over a driver to investigate if they have a license when observing them driving)).

46. *Prouse*, 440 U.S. at 662.

47. Appellant's Brief, *supra* note 22, at 34.

48. Brief of Appellee at 13-14, United States v. Wilson, 143 F.4th 647 (2025) (No. 23-30777), 2024 WL 3966066.

49. *Id.*

reasonable suspicion: "[f]actors that ordinarily constitute innocent behavior may provide a composite picture sufficient to raise reasonable suspicion in the minds of experienced officers."[50]

The government's argument exemplifies its standard response when a criminal defendant challenges a court's finding of reasonable suspicion. It follows a predictable pattern: even if suspicion of carrying a weapon was not enough, *other factors* contributed to the "totality of circumstances" relevant to reasonable suspicion.[51] For example, in *Illinois v. Wardlow*, when petitioners urged the Court to find that flight from police did not constitute reasonable suspicion, the Court concluded that, although flight alone was "not necessarily indicative of wrongdoing," Mr. Wardlow's unprovoked flight in a "high crime" area constituted reasonable suspicion for police intervention.[52]

Similarly, in September 2025, the Supreme Court issued a stay in *Noem v. Vasquez Perdomo*, indicating its belief in the likely success of the government's Fourth Amendment argument: that an individual's apparent race or ethnicity, speaking Spanish or English with an accent, and presence in an area where people often congregate for low-wage day work constitutes reasonable suspicion of illegal presence justifying an investigative stop.[53] Although the Court assured that "apparent ethnicity alone cannot furnish reasonable suspicion," it still found that "under this Court's case law regarding immigration stops . . . [apparent ethnicity] can be a 'relevant factor' when considered along with other salient factors."[54]

Although many behaviors deemed relevant have innocuous, non-criminal explanations, the Court rejects a "divide-and-conquer" analysis of factors—i.e., considering whether each behavior is itself suspicious—and lower courts

50. United States v. Jacquinot, 258 F.3d 423, 427-28 (5th Cir. 2001).

51. Brief of Appellee, *supra* note 48, at 13 (citing *Jacquinot*, 258 F.3d at 427 ("The reasonable suspicion analysis is a fact-intensive test in which the court looks at all circumstances together to weigh not the individual layers, but the laminated total.")).

52. Illinois v. Wardlow, 528 U.S. 119, 124 (2000) (finding that the defendant's presence in an area of high narcotics trafficking combined with his unprovoked flight upon noticing police satisfied reasonable suspicion).

53. Noem v. Vasquez Perdomo, No. 25A169, 2025 WL 2585637, at *1, *3 (U.S. Sep. 8, 2025) (Kavanaugh, J., concurring in the grant of application for stay). Justices Sotomayor, Kagan, and Jackson dissented from the stay, insisting that combination of legal activity cannot justify a seizure under the Fourth Amendment. *Id.* at *9 ("The government, and now the concurrence, has all but declared that all Latinos, U.S. citizens or not, who work low wage jobs are fair game to be seized at any time, taken away from work, and held until they provide proof of their legal status to the agents' satisfaction.").

54. *Id.* at *3 (citing United States v. Brignoni-Ponce, 422 U.S. 873, 887 (1975). Notably, while the Court's precedent in *Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975), held that apparent race is relevant to reasonable suspicion for an immigration stop, *Vasquez Perdomo* appears to drop the individuality of suspicion required by the Court in that case.

problematically weigh factors themselves without substantial guidance.[55] Recognizing the ills of this totality of circumstances approach, however, one state supreme court justice stated, "Adding up eight innocuous observations—eight zeros—does not produce a sum of suspicion."[56]

Here, the government maintained that other factors contributed to reasonable suspicion to stop Mr. Wilson. Principally, U.S. Marshals were looking for a dangerous, possibly armed fugitive, Malik Fernandez, who was wanted in connection with federal charges stemming from a shootout involving thirteen people. Mr. Fernandez was closely associated with Mr. Wilson.[57] As part of this search, Deputy Marshal Atkins was advised to find Mr. Wilson because he and Fernandez "were like brothers," and Mr. Wilson's neighbors confirmed they saw Mr. Fernandez "in and around [Wilson's] apartment."[58] The government argued that Mr. Wilson's association with Mr. Fernandez was worthy of significant weight in the reasonable suspicion calculus.[59] To be sure, Mr. Wilson challenged the government's problematic reliance on associational suspicion—he disputed that bad acts of Mr. Fernandez provided any *individualized* suspicion about Mr. Wilson.[60] Mr. Fernandez was not present on the day of the search, and the shooting in which Mr. Fernandez was involved had occurred fourteen months prior and did not involve Mr. Wilson.

In addition to heavily relying on Mr. Wilson's association with someone *not present* at the interaction, the government argued that Mr. Wilson's prior arrest was relevant. Mr. Wilson's prior arrest on an unrelated case should not bear on reasonable suspicion in this moment. Anna Roberts details the numerous consequences of arrest alone that rely on an assumption of guilt without any such adjudication.[61] Arrests, even those that do not result in prosecution (let alone conviction), create a permanent record available to

55. *See* Seth W. Stoughton, Kyle McLean, Justin Nix & Geoffrey Alpert, *Policing Suspicion: Qualified Immunity and "Clearly Established" Standards of Proof*, 112 J. CRIM. L. & CRIMINOLOGY 37, 56, 62-63 (2022) (arguing that the Court's insistence on low levels of specificity for suspicion and high levels of specificity to impose officer liability mean that it is nearly impossible to hold police accountable for constitutional violations).

56. Commonwealth v. Torres, 674 N.E.2d 638, 644 (Mass. 1997).

57. Brief of Appellee, *supra* note 48, at 14-15.

58. *Id.* at 15 (brackets in original).

59. *Id.* at 19 (citing United States v. Michelletti, 991 F.2d 183, 185 (5th Cir. 1993) (noting that one factor supporting reasonable suspicion was that the defendant may have been associated with three hostile individuals)).

60. Appellant's Reply Brief at 4-5, United States v. Wilson, 143 F.4th 647 (5th Cir. 2025) (No. 23-30777).

61. Anna Roberts, *Arrests as Guilt*, 70 ALA. L. REV. 987, 997-1000 (2019) (explaining that the consequences of arrest alone reveal a criminal regime where "the arrest represents the adjudicative moment, and punishment follows therefrom" (footnotes omitted)).

police.[62] Here, the government posited that Mr. Wilson's arrest history was relevant to whether, on this particular day, officers had the specific and articulable suspicion that he was committing or about to commit a crime.[63]

In deciding this dispute, the Fifth Circuit invalidated the lower court's reliance on Mr. Wilson's suspected carrying, but it ultimately backfilled with Mr. Wilson's suspicious companion and arrest history to find reasonable suspicion for the intervention.

IV. The Elevation of Gun Possession over Other Presumptively Legal Behavior

The Fifth Circuit held that suspicion of carrying a concealed weapon cannot alone justify a *Terry* stop.[64] Its rationale reveals a hypocritical divide between presumptively legal activities which *cannot* support reasonable suspicion (carrying a concealed firearm), and those which fold shapelessly into the deference afforded police applying *Terry*. After *Wilson*, legal activities like walking in a "high crime area" or acting in a "furtive" manner morph into suspicious factors that support police in justifying a stop of a civilian, yet carrying a concealed weapon in a state that permits such actions does not.[65] But carrying a gun, even if lawfully concealed, is objectively more dangerous and possibly more suspicious than walking in a particular way or in a particular location.

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62. *See* Eisha Jain, *Arrests as Regulation*, 67 STAN. L. REV. 809, 823 (2015) ("Absent robust sealing laws, police departments and others may widely disseminate criminal records, including arrests that did not result in conviction.").

63. *See* Brief of Appellee, *supra* note 48, at 15, 19. Louisiana residents who are at least 18 can legally own a firearm and carry a concealed weapon in public without a license. *See* LA. STAT. ANN. § 14:95(M) (2025); LA. STAT. ANN. § 40:1379.3(C)(4) (2025). Insisting that more than suspicion of carrying a weapon justified the *Terry* stop, the government cites cases where courts find additional articulable facts along with observation of a "bulge" on a target. Brief of Appellee, *supra* note 48, at 13-14 (citing *United States v. Hagood*, 78 F.4th 570, 580; United States v. Fields, 832 F.3d 831, 835 (8th Cir. 2016); United States v. Jones, No. 21-cr-00240, 2023 WL 6890161, at *2-3 (7th Cir. Oct. 19, 2023); and United States v. Bell, 572 F. App'x 417, 419 (6th Cir. 2014)). The government urged the Fifth Circuit to avoid deciding the bigger gun possession question: instead, Mr. Wilson's known association with Mr. Fernandez and his arrest record were enough to justify the intervention. Brief of Appellee, *supra* note 48, at 20 ("While this Court has yet to decide the issue whether carrying a concealed firearm, on its own, equates to reasonable suspicion of criminal activity, it need not do so in this case. Here, the articulated facts go well beyond mere gun possession.").

64. *Wilson*, 143 F.4th at 653.

65. *Vasquez Perdomo* suggests that other legal activities, including speaking Spanish or performing an ordinary occupation like landscaping, can also garner suspicion. No. 25A169, 2025 WL 2585637, at *3 (U.S. Sep. 8, 2025) (Kavanaugh, J., concurring in the grant of application for stay).

Critically, certain assumptions—and biases—about racialized behavior help to explain this line drawing. Take *Wilson*. Despite the pronouncement of an ostensibly pro-defendant rule, Mr. Wilson lost because of who he was friends with, and other legal behavior that we know is interpreted racially. The Fifth Circuit's announcement of this principle is likely, due to courts' backfilling and the various flaws of reasonable suspicion, to be applied unequally.

First, the court concluded that Louisiana law did not make carrying a firearm "presumptively unlawful," and such a presumption would be inconsistent with the Constitution's history and tradition, which prevents police from presuming gun owners as a class are violating the law.[66] In fact, the Supreme Court rejected a "firearm exception" to reasonable suspicion,[67] instead demanding consideration of the totality of the circumstances and *individualized* suspicion.[68] Courts cannot presume that all gun carriers are breaking the law because reasonable suspicion requires "focus on a particular person and his particular circumstances," and does not "allow[] officers to make class-wide, blanket determinations that all people of some disfavored type are criminals."[69]

Judge Andrew Oldham's declaration that assuming gun owners are breaking the law compromises the individualized suspicion required by the Fourth Amendment is both true and duplicitous. I agree that the Court has repeatedly held that for a police intervention to comply with the Fourth Amendment, "detaining officers must have a *particularized and objective* basis for suspecting the particular person stopped of criminal activity."[70] Over time, however, as the Court has enabled erosion of reasonable suspicion and interpreted the Fourth Amendment in a manner that fuels racialized

66. *Wilson*, 143 F.4th at 656 ("To hold otherwise is to derogate both our Fourth Amendment and our Second."). Others have discussed the originalism analysis in Judge Oldham's opinion. *See* Elie Mystal, *A Court Just Ruled that Cops Can't Stop-and-Frisk You—If They Suspect a Gun*, THE NATION (July 24, 2025), https://perma.cc/7VMD-454E (critiquing Judge Oldham's originalist analysis in *United States v. Wilson*).

67. *See* Florida v. J.L., 529 U.S. 266, 272-73 (2000) (rejecting a "firearm s exception" to the reliability of reasonable suspicion and requiring that tips regarding firearms still have sufficient indicia of reliability).

68. Navarette v. California, 572 U.S. 393, 396-97 (2014). This totality analysis "'turn[s] on the assessment of probabilities in particular factual contexts.'" Florida v. Harris, 568 U.S. 237, 244 (2013) (quotation omitted).

69. *Wilson*, 143 F.4th at 657.

70. United States v. Cortez, 449 U.S. 411, 417-18 (1981) (emphasis added). *See* Hochman Bloom, *Suspicion*, *supra* note 20 (manuscript at 18) (on file with author) (arguing that *Terry v. Ohio*, 392 U.S. 1 (1968) and *Ybarra v. Illinois*, 444 U.S. 85 (1979) mark the Court's high-water mark of requiring individualized suspicion).

policing,[71] its commitment to individuality of suspicion has been gravely inconsistent.[72]

Wilson exemplifies how reliance on associational suspicion reduces Fourth Amendment protection. In *Wilson*, the Fifth Circuit explained that presumptions of illegality are disfavored in Fourth Amendment law. In the rare cases where the Court approved of suspicionless searches, such as when permitting roadblocks to conduct drunk driving tests, these searches were lawful only because they advanced needs of public safety in arenas, such as highways and schools, where citizens had lower privacy interests.[73] Moreover, Judge Oldham claimed that "there is a world of difference" between programmatic, suspicionless searches, such as for drunk drivers, and "a targeted, suspicionless search for gun owners."[74]

The Fifth Circuit thus rejected any presumption of illegality for gun ownership. Taking up the government's analogy between carrying a concealed weapon and driving a car, Judge Oldham explained that in a shall-issue state like Louisiana, obtaining a driver's license is more difficult than acquiring a concealed carry permit, and yet officers do not have reasonable suspicion that any driver is unlicensed based on observing them drive.[75] This rationale—that police cannot assume citizens engaging in an activity subject to licensing are unlicensed—echoes *Bruen*'s lesson that suspecting someone is armed is not the same as suspecting someone is committing a crime. It also bypasses some well-established dangers of firearm possession entrenched in Fourth Amendment doctrine, where suspicion that someone is armed justifies deeper police intrusions.[76]

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71. *See* Hochman Bloom, *Whack-a-Mole*, *supra* note 18, at 1138-40 (arguing that "blading" is an ambiguous and racially applied term used to support reasonable suspicion for police intervention).

72. The attack on individualized suspicion erodes Fourth Amendment protection unevenly—further reducing the protection from police intrusion afforded to those living in highly policed populations by effectively criminalizing association with suspicious companions.

73. *Wilson*, 143 F.4th at 657 (citing Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 447 (1990) (upholding roadblocks to combat drunk driving); United States v. Martinez-Fuerte, 428 U.S. 543, 545 (1976) (upholding roadblocks to combat illegal immigration); and Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 664-65 (1995) (upholding random drug testing at schools)).

74. *Id.* at 657.

75. *Id.* at 658. Even though driving, like carrying a weapon, is subject to state regulation, "stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment" absent "articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered." Delaware v. Prouse, 440 U.S. 648, 663 (1979).

76. *Terry v. Ohio* held that an officer who has reasonable suspicion to believe criminal activity is afoot may stop a suspect to investigate further. 392 U.S. 1, 30 (1968). If the

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Scholars recognize that an expanding Second Amendment right calls into question the ability of police to base suspicion for a stop purely on suspicion that a person is armed. Although the Supreme Court has not answered whether reasonable suspicion that someone is armed alone authorizes a frisk,[77] *Bruen* certainly undermines that claim. Amanda Savage critiques a form of proactive policing that trains officers to recognize the "characteristics of an armed person" (CAP), arguing that the framework cannot justify stops and frisks after *Bruen*.[78] Exploring the jurisdictional differences of gun licensing laws, Brandon del Pozo and Barry Friedman suggest widespread uncertainty about "what the structure of any particular state's law means for *Terry* stops."[79]

Still, the Second Amendment may fail to protect marginalized groups from *Terry* stops. Reduced suspicion searches remain prevalent in communities considered "high crime" and among young people associating in public. A focus on the Second Amendment thus rings hollow for those living in highly policed communities—who would point to evidence showing police target surveillance amongst marginalized groups.[80] Indeed, Black Americans are disproportionately prosecuted for violating gun laws, both in New York,[81] and in the entire country.[82]

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officer has reasonable belief that the individual is armed and dangerous, the officer can pat down the person and look for weapons. *Id.*

77. Royce de R. Barondes, *Automatic Authorization of Frisks in* Terry *Stops for Suspicion of Firearm Possession*, 43 S. ILL. U. L.J. 1, 20 (2018) ("[E]xtant Supreme Court authority does not unequivocally indicate whether reasonable suspicion a *Terry* subject is armed authorizes a frisk.").

78. *See generally* Amanda Savage, *The Pseudoscience of Gun Hunting*, COLUM. L. REV. (forthcoming 2026) (arguing that the CAP framework does not provide actual guidance for officers on assessing dangerousness and relies on the inaccurate assumption that being armed and dangerous are synonymous).

79. Brandon del Pozo & Barry Friedman, *Policing in the Age of the Gun*, 98 N.Y.U. L. REV. 1831, 1851, 1853 (2023) ("In short: If possession of guns is lawful in a state, then stops are not.").

80. *See, e.g.*, PAUL BUTLER, CHOKEHOLD: POLICING BLACK MEN 59 (2017) (explaining that Fourth Amendment doctrine makes it easy for police to stop literally any car and provide a legal basis for the stop).

81. *See* Brief of the Black Attorneys of Legal Aid et al. as Amici Curiae in Support of Petitioners at 5, New York State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111 (2022) (No. 20-843) (arguing that New York's pretextual licensing scheme allocates too much discretion to the police to decide whose firearm is lawful and whose is a "violent felony").

82. Between 2000 and 2016, fifty-eight percent of those convicted for violating the primary federal gun statute, 18 U.S.C. § 922(g), were Black, and less than twenty-four percent were white. *Quick Facts: 18 U.S.C. § 922(g) Firearms Offenses*, U.S. SENT'G COMM'N 1 (July 2023), https://perma.cc/Z6MN-XXP2. *See* Bonita R. Gardner, *Separate and Unequal: Federal Tough-on-Guns Program Targets Minority Communities for Selective Enforcement*, 12 MICH. J. RACE & L. 305, 339-46 (2007) (analyzing the disparate impact of

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Here, even though the Fifth Circuit came out on the Second Amendment "side" of this question, holding that police cannot presume all individuals carrying concealed weapons are lawbreaking, it was satisfied that police had enough basis to suspect that *Mr. Wilson* was suspicious.[83] The court affirmed reasonable suspicion for Mr. Wilson's stop and search on alternative grounds. Yet these grounds, much like carrying a concealed weapon, also describe lawful activities.

The Fifth Circuit relied primarily upon Mr. Wilson's suspicious companions to conclude that officers had "ample reasonable suspicion to stop Wilson—separate and apart from the fact that he was a gun owner."[84] Officers approached Mr. Wilson because they wanted to interview him about his friend, and Mr. Wilson's "proximity to known or reported criminal activity" supported reasonable suspicion for the stop.[85] Incredibly, Judge Oldham used the same term, "propinquity," to uphold police reliance on associational suspicion, that the Supreme Court used in 1976 to reject such reliance. In *Ybarra v. Illinois*, the Court declared that "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person."[86] Associating with suspicious companions should not subject people to "serious intrusions upon the sanctity of the person."[87] In direct contrast, the Fifth Circuit concluded that "it is well established that a 'suspect's companionship with or propinquity to an individual independently suspected of criminal activity is a factor to be considered in assessing the reasonableness of a seizure,'"[88] repeating facts connecting Mr. Wilson to Mr. Fernandez.

The court accepted that Mr. Wilson's association with a suspected criminal, who was not present, supported reasonable suspicion to stop and search him.[89] This conclusion aligns with other courts, affirming *Terry* stops

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the Project Safe Neighborhoods project and characterizing it as both "separate and unequal").

83. Judge Oldham concluded that regardless of permitting schemes, keeping and bearing arms is "*presumptively lawful* nationwide." United States v. Wilson, 143 F.4th 647, 659 (5th Cir. 2025).

84. *Id.* at 659-60.

85. *Id.* at 659 (citing United States v. Alvarez, 40 F.4th 339, 346 (5th Cir. 2022)).

86. 444 U.S. 85, 91 (1979) ("[A] search or seizure of a person must be supported by probable cause particularized with respect to that person.").

87. Terry v. Ohio, 392 U.S. 1, 17 (1968).

88. *Wilson*, 143 F.4th at 660.

89. Judge Oldham relies on Circuit precedent, which stands in contrast to other circuits, like the Fourth, that have repeatedly rejected reliance on associational suspicion for *Terry* stops. United States v. Thomas, 997 F.3d 603, 611 (5th Cir. 2021) (quoting United States v. Silva, 957 F.2d 157, 161 (5th Cir. 1992)); *see* United States v. Michelletti, 13 F.3d

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where an individual's companions have been labeled with gang membership, or are among the millions of Americans serving community supervision. Reliance on associational suspicion functionally lowers an individual's protection from police even when, as in Mr. Wilson's case, those companions are not contemporaneously present during the police action. Police reliance on associational suspicion is also likely racially coded, given what we know about racialized interpretations of other legal behavior.

The Fifth Circuit concluded that while "[a]ll of that alone would give officers reasonable suspicion to *Terry* stop Wilson," Mr. Wilson's prior arrest record added to officers' suspicion.[90] Because, in the court's view, officers had basis for a *Terry* stop *prior* to seeing the bulge believed to be a gun, it denied Mr. Wilson's Fourth Amendment challenge even while holding that suspicion of carrying concealed firearm is a presumptively legal activity that does not alone justify a stop and search.[91]

V. Implications of *Wilson*'s Firearm Exceptionalism

The Fifth Circuit's decision in *United States v. Wilson* raises substantial concerns about a jurisprudence of "firearms exceptionalism."

First, following *Bruen,* Harawa predicted that "whatever the scope of the Second Amendment, the scope will always be more limited for Black people."[92] By singularly elevating the right to carry firearms above the right to engage in other legal activity without police intervention, the Fifth Circuit, in *Wilson*, lends support to Harawa's conclusion.

The Fourth Amendment is already interpreted in ways that facilitate racialized policing. Critical race scholars persuasively argue that the Fourth Amendment contributes to racial injustice, particularly the subordination of Black Americans.[93] State and federal courts perpetually struggle with deciding which *legal behaviors* can, together, support reasonable suspicion.[94] Courts

838, 842 (5th Cir. 1994) (en banc) (incorporating the suspicious activities of a defendant's nearby associates into the reasonable-suspicion analysis).

90. *Wilson*, 143 F.4th at 660.

91. *Id.* (citing Pennsylvania v. Mimms, 434 U.S. 106, 112 (1977)) ("[S]o long as officer has reasonable suspicion to conduct a stop *before* seeing a gun, his observation of a 'bulge' permits the conclusion that the suspect is 'armed.'").

92. Harawa, *NYSRPA*, *supra* note 34, at 178.

93. *See* Devon W. Carbado, *(E)racing the Fourth Amendment*, 100 MICH. L. REV. 946, 969 (2002) (explaining that Fourth Amendment doctrines conceptualize race through a racial lens of colorblindness, based on the experiences of white people); Daniel S. Harawa, *Coloring in the Fourth Amendment*, 137 HARV. L. REV. 1533, 1535-39 (2024).

94. The Fifth Circuit recently found that police had reasonable suspicion to detain an individual where the officer observed him lawfully sitting for 10-15 seconds in the front seat of his car, which was parked in the lot of an open convenience store in a

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differ on how much lawful, but subjectively suspicious, conduct is constitutionally sufficient.[95] A few courts have refused to allow purely lawful conduct, just because it occurs in an allegedly high-crime area, to establish reasonable suspicion for a stop.[96]

United States v. Wilson reveals that even where gun ownership is presumed lawful and privileged above other lawful activities, police can backfill reasonable suspicion with other activities, and that finding will be deferred to by reviewing courts. Living in a high-crime neighborhood, associating with individuals in public spaces, associating with individuals serving a form of community supervision are all presumptively lawful. These activities don't provide specific reasons to suspect that a person has or is about to commit a crime. Likewise, a prior arrest in an unrelated case does not offer "specific and articulable facts" that an individual has or is presently about to commit a different crime.[97]

We should be particularly concerned when, as in *Wilson*, courts evaluating *Terry* stops fall back on associational suspicion when they are precluded by a robust Second Amendment from acknowledging their belief that the *wrong person* is carrying a concealed weapon. While the impact of racism on police encounters in general is widely acknowledged,[98] police reliance on a person's companions to justify a search is compounded by the misperception that

high-crime area. United States v. Flowers, 6 F.4th 651, 656 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 2707 (2022). The dissent insisted that sitting for 10-15 seconds in a parked car outside a convenience store in a high-crime area did not constitute the particularized suspicion required by *Terry*. *Id.* at 659-61 (Elrod, J., concurring in part and dissenting in part). A divided Fifth Circuit held that two men seen "dawdling in a Cadillac parked out of view from inside the convenience store" in a high-crime neighborhood supported the officer's reasonable suspicion for a search. *Id.* at 657-58.

95. *See, e.g.*, Ryburn v. Huff, 565 U.S. 469, 476 (2012) (per curiam) (suggesting that police are aware of "many circumstances in which lawful conduct may portend imminent violence").

96. The Eighth Circuit recognized that a defendant "clutching the outside of his hoodie pocket" was consistent with "firearm-carrying clues," but concluded it was not dispositive because "nearly every person has, at one time or another, walked in public using one hand to 'clutch' a perishable or valuable or fragile item being lawfully carried in a . . . pocket." United States v. Jones, 606 F.3d 964, 967 (8th Cir. 2010); *see also* United States v. Hernandez, 847 F.3d 1257, 1268-69 (10th Cir. 2017) (quoting United States v. Wood, 106 F.3d 942, 948 (10th Cir. 1997)) (finding no reasonable suspicion, in part because "if 'black clothing were sufficient to confer reasonable suspicion, it could subject the ambling public' . . . 'to virtually random seizures, inquisitions to obtain information which could then be used to suggest reasonable suspicion, and arbitrary exercises of police power'").

97. Terry v. Ohio, 392 U.S. 1, 21 (1968).

98. Scott E. Sundby, *The Rugged Individual's Guide to the Fourth Amendment: How the Court's Idealized Citizen Shapes, Influences, and Excludes the Exercise of Constitutional Rights*, 65 UCLA L. REV. 690, 725 (2018).

people of color found in groups are more likely to be friends (or co-conspirators) as opposed to strangers. Police reliance on a person's associates to justify intervention will disproportionately affect young and poor people. Youth are more likely to spend time with peers, congregate in public spaces and have police interactions.[99] Lower-income people, already overrepresented in the criminal system, will definitionally have smaller homes, forcing socialization to public spaces.[100] Companion-based suspicion is thus a particularly troubling erosion of Fourth Amendment reasonable suspicion, disproportionately impacting young, poor, people of color.

Lower courts, without guidance on how to weigh the multitudes of ambiguous and racialized reasons provided by police to justify *Terry* stops,[101] will continue to default to deference and hindsight bias. Doing so merely solidifies entrenched inequalities in where, who, and how we police.

99. *See* Yolander G. Hurst, James Frank & Sandra Lee Browning, *The Attitudes of Juveniles Toward the Police: A Comparison of Black and White Youth*, 23 POLICING: INT'L J. POLICE STRATEGIES & MGMT. 37, 40 (2000) (discussing the fact that black youth are more likely than white youth to have family members who have been verbally or physically abused by police); Aliza Hochman Bloom, Known to Police: Enforcement of Modern Juvenile Curfews (Sep. 27, 2025) (unpublished manuscript) (on file with author) (arguing that juvenile curfew enforcement has myriad Fourth Amendment implications and expands present and future avenues to criminal liability for young people associating in groups).

100. People living at or below the poverty line comprise over half of the people who are sentenced in the criminal system, and "over two-thirds of those in jail reported incomes of less than $12,000 per year. In total, at least 80% of incarcerated individuals are indigent." Mariam A. Hinds, *The Shadow Defendants*, 113 GEO. L.J. 823, 832 (2025).

101. These reasons include "blading," "nervousness," "furtive movements," and "flight." Hochman Bloom, *Whack-a-Mole*, *supra* note 18, at 1134, 1159; *see* Grunwald & Fagan, *supra* note 11, at 350-52.