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THE SECOND AMENDMENT IN THE STREET

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ABSTRACT—Commentators have predicted that the Supreme Court's decisions in *District of Columbia v. Heller* and *McDonald v. City of Chicago* could hamper police efforts to seize guns on the street. Many police officers have understood the Fourth Amendment to permit stopping and frisking anyone who appears to possess a handgun in public. But that understanding is rooted in laws that made handgun possession a crime, the kinds of laws struck down in *Heller* and *McDonald*. The doctrinal collision that this appears to set up between the Second and Fourth Amendments will likely be less meaningful on the streets—particularly in low-income, minority neighborhoods—than commentators suggest. This is because the Fourth Amendment affords police many opportunities to dodge the collision. The aggressive forms of policing associated with gun interdiction in minority neighborhoods will likely continue, but now with added constitutional gravity. If gun rights advocates care about the fair distribution of Second Amendment rights, they should worry about the formal and practical opportunities the Fourth Amendment creates for the aggressive policing associated with firearm interdiction in poor minority communities. These advocates should make police reform and racial justice a core part of their agenda, something they have not done to date.

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INTRODUCTION

Commentators have predicted that the Supreme Court's decisions in *District of Columbia v. Heller*[1] and *McDonald v. City of Chicago*[2] could hamper police efforts to seize guns on the street.[3] This would seem to be confirmed by a spate of recent federal court opinions suggesting that Second Amendment doctrine and Fourth Amendment doctrine are on a collision course.[4] The Fourth Amendment requires "reasonable suspicion" that a crime has occurred (or is about to occur) to justify an investigative stop.[5] Police officers in some American cities have understood the Fourth Amendment to permit stopping and frisking anyone who reasonably appears to possess a handgun in public.[6] That understanding is rooted in laws like those in

[1] 554 U.S. 570 (2007).

[2] 561 U.S. 742 (2010).

[3] *See, e.g.*, Jeffrey Bellin, *The Right to Remain Armed*, 93 WASH. U. L. REV. 1, 17 (2015) (noting that "courts are scrutinizing gun regulations with renewed vigor"); Joseph Blocher, *Firearm Localism*, 123 YALE L.J. 82, 105 (2013) (explaining that *Heller* and *McDonald* could result in a "nationalized approach" to gun regulations that could interfere with local rules); Michael C. Dorf, *Does* Heller *Protect a Right to Carry Guns Outside the Home?*, 59 SYRACUSE L. REV. 225, 225–26 (2008) (recognizing the difficulty New York City may have in maintaining its gun control laws post-*Heller*); Lawrence Rosenthal, *Second Amendment Plumbing After* Heller*: Of Standards of Scrutiny, Incorporation, Well-Regulated Militias, and Criminal Street Gangs*, 41 URB. LAW. 1, 5 (2009) (noting that *Heller* may jeopardize police efforts to get guns off the streets).

[4] *See, e.g.*, United States v. Leo, 792 F.3d 742, 752 (7th Cir. 2015) (holding that police discovery of a gun in a backpack did not justify a full search of the bag); Northrup v. City of Toledo Police Dep't, 785 F.3d 1128, 1131–32 (6th Cir. 2015) (citations omitted) (finding that a legally armed individual is not "armed and dangerous" in the context of reasonable suspicion); United States v. Black, 707 F.3d 531, 540 (4th Cir. 2013) (finding that exercising the right to possess a weapon cannot justify reasonable suspicion); United States v. Ubiles, 224 F.3d 213, 215, 217–18 (3d Cir. 2000) (holding that a report that the defendant was possessing a weapon did not alone justify reasonable suspicion); *see also* United States v. Robinson, 814 F.3d 201, 208–09 (4th Cir. 2016), *rev'd en banc*, 846 F.3d 694 (4th Cir. 2017) (finding that merely possessing a firearm does not justify a stop-and-frisk).

[5] *See* Terry v. Ohio, 392 U.S. 1, 30–31 (1968).

[6] *See, e.g.*, Jeffrey Fagan & Amanda Geller, *Following the Script: Narratives of Suspicion in* Terry *Stops in Street Policing*, 82 U. CHI. L. REV. 51, 70 (2015) (noting that 8.9% of recorded stop and frisks in New York City between 2004 and 2012 were for a "suspicious bulge"—a visual cue of gun possession); *see also* Benjamin Weiser, *Police in Gun Searches Face Disbelief in Court*, N.Y. TIMES (May 12, 2008),

Washington D.C. and Illinois that made handgun possession a crime.[7] In *Heller* and *McDonald*, however, the Court read the Second Amendment to forbid outright handgun bans.[8] The doctrinal collision that this appears to set up will likely be less meaningful on the streets—particularly in low-income, minority neighborhoods—than commentators suggest. This is because the Fourth Amendment affords police many opportunities to dodge the collision. This potential for avoidance is deeply troublesome if the Second Amendment's purpose is to enable citizens to resist unlawful private and public violence.[9] Principled Second Amendment advocates should oppose gun interdiction and the aggressive forms of policing that go along with it. That in turn means taking police reform and racial justice far more seriously than they have to date.[10]

The most aggressive forms of urban gun interdiction occur in so-called "high crime areas"[11]—usually poor minority neighborhoods that are epicenters of handgun violence.[12] Before *Heller* and *McDonald*, cues of handgun possession like "furtive movement" and "waistband bulges" in a high-crime neighborhood would provide "reasonable suspicion."[13] In the wake of these two key cases, however, that may no longer be true. If

http://www.nytimes.com/2008/05/12/nyregion/12guns.html [https://perma.cc/7BNU-AFBV] (noting the routineness of questionable stops based on gun possession).

[7] *McDonald*, 561 U.S. at 742; *Heller*, 554 U.S. at 571.

[8] The Court forbade such laws to the extent that they prohibited handgun possession in the home. *See McDonald*, 561 U.S. at 750. The Court has not directly addressed the scope of the Second Amendment outside the home. *Heller* and *McDonald*, however, do strongly imply that the Second Amendment confers protection outside the home. *See* Drake v. Filko, 724 F.3d 426, 430 (3d Cir. 2013) ("[T]he Supreme Court has decided that the [Second] [A]mendment confers a right to bear arms for self-defense, which is as important outside the home as inside." (citing Moore v. Madigan, 702 F.3d 933, 942 (7th Cir. 2012))).

[9] The Supreme Court has suggested that this is in fact the point. *See Heller*, 554 U.S. at 598. The Court's further suggestion that there may be a constitutional right to self-defense raises the provocative question of whether such a right extends to resisting unlawful seizures by the police. *See* Kindaka Sanders, *A Reason to Resist: The Use of Deadly Force in Aiding Victims of Unlawful Police Aggression*, 52 SAN DIEGO L. REV. 695, 716 (2015).

[10] *See* Adam Winkler, *The Right to Bear Arms Has Mostly Been for White People*, WASH. POST (July 15, 2016), https://www.washingtonpost.com/posteverything/wp/2016/07/15/the-right-to-bear-arms-has-mostly-been-reserved-for-whites/?utm_term=.734b238320b1 [https://perma.cc/L8C2-55RB]. Second Amendment activists' lack of attention to race is ironic given its historic centrality in the debates about gun rights and restrictions. *See* Adam Winkler, *The Secret History of Guns*, ATLANTIC (Sept. 2011), https://www.theatlantic.com/magazine/archive/2011/09/the-secret-history-of-guns/308608/ [https://perma.cc/4SNV-ZUF9].

[11] *See* Illinois v. Wardlow, 528 U.S. 119, 123 (2000).

[12] *See* Tracey L. Meares, *The Law and Social Science of Stop and Frisk*, 10 ANN. REV. L. & SOC. SCI. 335, 339–41 (2014).

[13] *See* Northrup v. City of Toledo Police Dep't, 785 F.3d 1128, 1130 (6th Cir. 2015); United States v. Baker, 78 F.3d 135, 137 (4th Cir. 1996); *see also* Nirej Sekhon, *Blue on Black: An Empirical Assessment of Police Shootings*, 54 AM. CRIM. L. REV. 189, 198 (2017).

handguns are presumptively legal,[14] police officers might not even be able to stop individuals to check for a license.[15] However, Second Amendment advocates should not be sanguine about the likelihood that the aggressive forms of policing associated with gun interdiction will end.

The Fourth Amendment "reasonable suspicion" standard is more permissive of gun interdiction than it initially appears. In conjunction with state licensing rules, the Fourth Amendment will likely accommodate aggressive gun interdiction in many poor, minority neighborhoods. Failing that, "consent" is another Fourth Amendment doctrine that is unaffected by the Second Amendment. The Fourth Amendment permits suspicionless searches if the subject consents.[16] However, the Supreme Court has interpreted "consent" to require considerably less of police than the word's ordinary meaning would suggest—the police may use coercive power to coax a "yes" from targets.[17]

The formal latitude created by Fourth Amendment doctrine only begins to suggest the practical latitude police enjoy on the streets. We tend to conceptualize Fourth Amendment doctrine as prospectively regulating police authority. In practice, however, these doctrines are after-the-fact narrative resources that can be used as post hoc rationales for conduct that police think a court might view as unconstitutional. Because Fourth Amendment regulation of street policing depends heavily on such accounts of what did (and did not) transpire, police enjoy considerable opportunity for subterfuge. *Heller* and *McDonald* will do little to change this. If Second Amendment rights are to be fairly distributed, then gun rights advocates must address this reality and make police reform a core part of their agenda.

This Essay identifies the formal and practical opportunities that the Fourth Amendment creates for police to evade the Second Amendment on the streets, particularly in low-income, minority communities. Parts I through III discuss how the Fourth Amendment's reasonable suspicion

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[14] The Supreme Court has not yet expressly held that the Second Amendment makes this true in public, but many states have enacted permissive gun laws that do. *See, e.g.*, ALA. CODE § 13A-11-73(b) (2013) (allowing licensed individuals to carry unloaded handguns in their vehicles); ARIZ. REV. STAT. ANN. §§ 13-3102(A)(2), 13-3111(A) (2014) (no permit required for open or concealed carry provided that certain age and other restrictions satisfied); GA. CODE ANN. § 16-11-126(g) (2016) (allowing various forms of firearms possession even without a carry license); OHIO REV. CODE ANN. § 9.68(C)(1) (LexisNexis 2007) (defining possession of a firearm as including open concealed or concealed carry); TEX. PENAL CODE ANN. § 46.15(b)(6) (West 2017) (defining carrying a gun as including open or concealed carry).

[15] *Cf.* Delaware v. Prouse, 440 U.S. 648, 663 (1979) (Fourth Amendment prohibits suspicionless stop of motorist for license check).

[16] *See* United States v. Drayton, 536 U.S. 194, 200–01 (2002).

[17] *See* Nirej Sekhon, *Willing Suspects and Docile Defendants: The Contradictory Role of Consent in Criminal Procedure*, 46 HARV. C.R.-C.L. L. REV. 103, 114 (2011).

standard, *Terry* frisks,[18] and the definition of consent permit such evasion. Part IV sums up how police can use these Fourth Amendment rationales as after-the-fact justifications for stops and searches that threaten Second Amendment rights.

I. EXPERTISE AND REASONABLE SUSPICION

The Second Amendment tolerates some criminal regulation of gun possession.[19] Even in states with permissive gun laws, there are usually some restrictions. For example, many states require a license and prescribe whether handguns may be concealed in public.[20] Violating these rules may be a misdemeanor criminal offense or an infraction.[21] For those with previous felony convictions, possessing a firearm is generally a felony.[22] These rules may allow the police to circumvent Second Amendment protections, at least in so-called "high-crime" neighborhoods.

Most gun fatalities are handgun induced,[23] and are concentrated amongst poor people of color.[24] From the little data available, illegal firearms likely play an outsized role in these fatalities.[25] That may reflect higher rates of illegal firearm ownership in poor minority communities than in other communities, but it is difficult to be certain. For years, the National Rifle Association has successfully thwarted public health and other demographic research about guns and gun violence.[26] The paucity of available research

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[18] *See* Terry v. Ohio, 392 U.S. 1 (1968).

[19] *See* District of Columbia v. Heller, 554 U.S. 570, 626 (2007).

[20] *See* Brian Enright, *The Constitutional "Terra Incognita" of Discretionary Concealed Carry Laws*, 2015 U. ILL. L. REV. 909, 918–927 (2015) (summarizing different states' approaches).

[21] *See, e.g.*, ALA. CODE § 13A-11-84(a) (2015); ARIZ. REV. STAT. ANN. § 13-3102(M) (2014); GA. CODE ANN. § 16-11-132(b) (2014); TEX. PENAL CODE ANN. § 46.02 (West 2017).

[22] *See, e.g.*, GA. CODE ANN. § 16-11-131 (2017).

[23] MICHAEL PLANTY & JENNIFER L. TRUMAN, U.S. DEP'T OF JUSTICE BUREAU OF JUSTICE STATISTICS, FIREARM VIOLENCE, 1993–2011, 3 (2013), https://www.bjs.gov/content/pub/pdf/fv9311.pdf [https://perma.cc/YA6Q-R4UF].

[24] *See id.* at 5.

[25] *Cf.* Philip J. Cook et al., *Sources of Guns to Dangerous People: What We Learn by Asking Them*, 79 PREVENTIVE MED. 28, 35 (2015) (survey of ninety-nine "criminally active gun-involved" men admitted to Cook County jail); Anthony Fabio et al., *Gaps Continue in Firearm Surveillance: Evidence from a Large U.S. City Bureau of Police*, 10 SOC. MED. 13, 20 (2016) (79% of criminal perpetrators in Pittsburgh "are connected to firearms for which they are not the legal owner[s]"); *see also* Peter Hermann et al., *One Illegal Gun. 12 Weeks. A Dozen Criminal Acts. The Rapid Cycle of Gun Violence.* WASH. POST (Nov. 15, 2017), https://www.washingtonpost.com/graphics/2017/local/one-gun-the-rapid-cycle-of-gun-violence/?utm_term=.ad8d08befef2 [https://perma.cc/F9E9-RM98] (noting that many high-crime areas are plagued with the sharing of illegal firearms within gangs).

[26] *See* Todd C. Frankel, *Why the CDC Still Isn't Researching Gun Violence, Despite the Ban Being Lifted Two Years Ago*, WASH. POST (Jan. 14, 2015), https://www.washingtonpost.com/news/storyline/wp/2015/01/14/why-the-cdc-still-isnt-researching-gun-violence-despite-the-ban-being-lifted-two-years-ago/?utm_term=.72f2378a467c [https://perma.cc/AT5F-HTAW]; Sheila Kaplan, *Congress Quashed*

funding has caused many urgent (and obvious) questions regarding guns to remain unanswered. Courts are sometimes willing to rely on police expertise to fill this kind of data gap,[27] but police sampling is problematic and will be skewed by the police's frequent contact with lawbreakers.

When run through the filter of police expertise, the geographic concentration of handgun fatalities may undo any presumption of lawfulness that the Second Amendment creates. This seems especially likely in poor minority neighborhoods. Courts tend to credit police expertise with regard to whether an area is "high-crime."[28] The claim of expertise is usually based on officer testimony regarding personal experience in a place or with particular categories of misconduct.[29] For example, an officer with homicide experience might offer testimony that most of the handgun fatalities in a particular neighborhood involved unregistered firearms. An officer with gun interdiction experience might make even broader generalizations about guns in a particular neighborhood. In the absence of meaningful data about rates of licensed and unlicensed gun ownership in an area, it is difficult to challenge those kinds of claims. If courts in a particular jurisdiction are persuaded that unlicensed firearms are pervasive in a neighborhood, they are likely to credit police officers' assumptions that any given handgun there is likely illegal. That would, in effect, permit police to continue acting on cues of handgun possession as if handguns were legislatively forbidden.

There are also more individualized techniques for generating reasonable suspicion regarding illegal handgun possession. For example, an individual's apparent youth or manner of carrying a handgun may do the trick. Because licenses are restricted to individuals over a certain age (often twenty-one),[30] a reasonable suspicion narrative could be conjured for anyone who appears to be younger than that age. In addition, officers who regularly patrol a particular location may be familiar with individuals who have

Research into Gun Violence. Since Then, 600,000 People Have Been Shot, N.Y. TIMES (Mar. 12, 2018), https://www.nytimes.com/2018/03/12/health/gun-violence-research-cdc.html [https://perma.cc/WMC5-2X68].

[27] *See* Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 HARV. L. REV. 1995, 2016–24 (2017) (tracing the rise of police officers as expert witnesses and identifying sources of their expertise).

[28] Andrew Guthrie Ferguson & Damien Bernache, *The "High-Crime Area" Question: Requiring Verifiable and Quantifiable Evidence for Fourth Amendment Reasonable Suspicion Analysis*, 57 AM. U. L. REV. 1587, 1607 (2008).

[29] *See id.* at 1607–08.

[30] *See* GA. CODE ANN. § 16-11-129(b)(2) (2017); OHIO REV. CODE ANN. § 2923.125(D) (LexisNexis 2018), TEX. GOV'T CODE ANN. § 411.172(a)(2) (West 2016); W. VA. CODE § 61-7-3(a) (2016). *But see* ALA. CODE § 13A-11-72(b) (2015) (allowing gun licensing at 18 years old).

noteworthy criminal histories.[31] Awareness that a specific individual is a felon coupled with indicia of gun possession would provide reasonable suspicion.[32]

The most important point about reasonable suspicion may be that officers typically craft the narrative account documenting it *after* the incident is over. This creates wide latitude for subterfuge, a topic taken up in the final Part of this Essay.

II. *TERRY* FRISKS

So long as an officer has reasonable suspicion that an individual has or will commit a crime, the officer can likely search that individual for a handgun.[33] *Terry v. Ohio* held that officers may conduct a limited scope pat-down for weapons if it is reasonable to think that the suspect is "armed and dangerous."[34] Courts have been permissive in allowing pat-downs whenever it is plausible to think a suspect is armed. For example, in *Michigan v. Long*,[35] the Court concluded that *Terry* permits officers to search a vehicle cabin for firearms following a traffic stop because of the possibility that an unrestrained suspect could readily retrieve and use a weapon against the officers.[36]

In *United States v. Robinson*, the Fourth Circuit recently held that the "armed and dangerous" standard is satisfied if an officer reasonably believes a suspect had a gun.[37] The court held that an officer need not have formed a reasonable suspicion that the suspect was armed and then, separately, a reasonable suspicion that he was dangerous.[38] This reversed a three-judge panel's earlier decision finding that West Virginia's permissive handgun law created a presumption that guns were not dangerous per se.[39]

Robinson suggests that, so long as police are able to generate a reasonable suspicion narrative for a stop, they will likely have latitude to search the individual for a gun. With the proliferation of rules governing

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[31] *See, e.g.*, United States v. Leo, 792 F.3d 742, 744 (7th Cir. 2015) (noting that an officer recognized a felon); United States v. Collins, 650 F. Supp. 2d 527, 534 (S.D.W. Va. 2009), *aff'd*, 390 F. App'x 273 (4th Cir. 2010) (noting that an officer and a felon recognized each other).

[32] *See Leo*, 792 F.3d at 744; *Collins*, 650 F. Supp. 2d at 534.

[33] Terry v. Ohio, 392 U.S. 1, 24 (1968).

[34] *Id.* at 27.

[35] 463 U.S. 1032 (1983).

[36] *Id.* at 1051–52.

[37] 846 F.3d 694, 707 (4th Cir. 2017).

[38] *Id.* at 700.

[39] United States v. Robinson, 814 F.3d 201, 208–09 (4th Cir. 2016), *rev'd en banc*, 846 F.3d 694 (4th Cir. 2017).

traffic, it is easy for police to rationalize stopping a vehicle.[40] Even in the pedestrian context it is not so difficult considering that in "high crime areas," running away from an officer,[41] averting one's gaze from an officer, or staring too long at an officer, all might constitute "reasonable suspicion."[42]

III. CONSENT

Police need not wait until they have reasonable suspicion that someone has an illegal handgun before approaching and searching him. In theory, if an individual refuses to consent, officers must discontinue the interaction and be on their way.[43] The Fourth Amendment permits "consensual encounters"—the police may approach civilians and simply ask for permission to search them. The Supreme Court has noted with approval that obtaining "consent" is a common and effective investigation tactic in street and traffic policing.[44] An encounter is "consensual" if a "reasonable [innocent] person" in the civilian's position would have felt free to decline the police request.[45] The Court has understood this standard to permit fairly high levels of police coercion. For example, the intimidation engendered by an officer's uniform and weapon does not vitiate consent,[46] nor does an individual's ignorance as to her right to refuse the officer's request.[47] The Court has found a search consensual when multiple officers boarded a bus and asked to search while mere inches away from the suspect's face.[48] Many people would likely feel intimidated by such police conduct and submit to it.[49] This is even truer for poor people of color. The standard for consent does not require courts to consider the unique sociological circumstances that make members of some communities more vulnerable to the police's persuasive power than others. This ensures that what the Fourth Amendment considers "consent" is at distant remove from what most ordinary people consider "consent."

Consent doctrine also creates the opportunity for police to cast encounters that no one understood as voluntary when they occurred as if they

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[40] *See Long*, 463 U.S. at 1035–36 (noting that officers investigated car that was "traveling erratically and at excessive speed.").

[41] *See* Illinois v. Wardlow, 528 U.S. 119, 125 (2000).

[42] *See* Erik Luna, *Hydraulic Pressures and Slight Deviations*, 2008–2009 CATO SUP. CT. REV. 133, 176.

[43] *See* Florida v. Royer, 460 U.S. 491, 497–98 (1983).

[44] Schneckloth v. Bustamonte, 412 U.S. 218, 227–28 (1973).

[45] United States v. Drayton, 536 U.S. 194, 202 (2002).

[46] *See id.* at 204–05.

[47] *See* Ohio v. Robinette, 519 U.S. 33, 39 (1996) (citing *Schneckloth*, 412 U.S. at 227).

[48] *Drayton*, 536 U.S. at 197–200.

[49] *See id.* at 212 (Souter, J., dissenting).

were. Including a few words in a police report to the effect that the officers asked for permission to conduct a search can make a mandatory request appear consensual. "Consent," much like "reasonable suspicion," is a *post hoc* narrative resource rather than an *a priori* restraint. It's all in the telling.

IV. FOURTH AMENDMENT AS NARRATIVE RESOURCE

Each of the Fourth Amendment justifications discussed above is ultimately a narrative resource available to officers following an arrest. This is typically when an officer puts pen to paper and creates a formal account of an encounter, identifying the specific rationales for the stop and search.[50] For the myriad encounters in which there is no arrest, citizens will have little incentive to litigate any perceived constitutional violations, and this is even more true for those who live in neighborhoods where gun interdiction efforts are most vigorous.[51] Even though officers are obliged to uphold the Constitution whenever they search or seize, it will be the rare case in which they have to provide a formal account of the constitutional rationales for their choices.

Whether an investigative stop was supported by consent or reasonable suspicion are factual questions for a judge. Both explicitly call for an analysis of the facts from the police officer's perspective—would a reasonable officer have believed there was consent or evidence of criminal wrongdoing?[52] This leaves police officers with considerable latitude to embellish or even manufacture facts. Doing so will not seem terribly ignoble when contraband was actually found, inevitably true where suppression is sought. Officers will typically have the narrative advantage over defendants. Not only are the former more seasoned witnesses than the latter, but they also have the credibility of their office.

CONCLUSION

Second Amendment advocates' victories in the Supreme Court may not amount to much on the street. *McDonald* and *Heller* have changed the constitutional landscape in principle and have also set up an apparent doctrinal collision with the Fourth Amendment. Police will no longer be able to stop suspects based on cues of handgun possession. That collision, however, even if resolved in favor of Second Amendment rights, will likely fail to sufficiently protect gun owners in poor, minority neighborhoods. If

[50] *See* Nirej Sekhon, *Mass Suppression: Aggregation and the Fourth Amendment*, 51 GA. L. REV. 429, 432 (2017).

[51] *See id.* at 431–32.

[52] *Id.* at 450, 452–53.

gun rights advocates care about the fair distribution of Second Amendment rights, they should be concerned about the formal and practical opportunities the Fourth Amendment creates for aggressive firearm policing. The Fourth Amendment is sieve-like when it comes to police regulation; most misconduct passes through without any judicial involvement or recognition. That reality, due to the intersection of the Second and Fourth Amendments, now has added constitutional gravity.

Aggressive policing in high-crime neighborhoods burdens innocent residents of those neighborhoods, who are more likely to be hassled by police than similarly situated residents of other neighborhoods.[53] This is ironic because residents of high-crime neighborhoods likely have more reason to avail themselves of the Second Amendment right to bear arms than those who live in safer neighborhoods. Second Amendment advocates should take note of this and include police reform and racial justice in their core agenda.

[53] The Court has recognized as much. *See* Illinois v. Wardlow, 528 U.S. 119, 125–26 (2000) (finding that while individuals in high-crime areas may have innocent reasons for fleeing police, such as fear of law enforcement, officers and courts may still take into account such conduct when determining reasonable suspicion).