No.

In the Supreme Court of the United States

ANTONIO RAY LIDDELL,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the possibility that police officers will come across a dangerous object during a search, when that object poses no immediate threat to the safety of the officers or the public, triggers the "public safety" exception to *Miranda* v. *Arizona*, 384 U.S. 436 (1966), that was recognized by this Court in *Quarles* v. *New York*, 467 U.S. 649 (1984).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Antonio Ray Liddell, respectfully petitions for a writ of certiorari to review the judgment of the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals, (App., *infra*, 1a-11a), is reported at 517 F.3d 1007. The opinion of the district court, (App., *infra*, 12a-21a), is unreported.

JURISDICTION

The judgment of the court of appeals was entered on Feb. 25, 2008. A timely petition for rehearing and rehearing en banc was denied on April 23, 2008. App, *infra*, 22a. On July 14, 2008, Justice Alito extended the time for filing a petition for a writ of certiorari until Aug. 21, 2008. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part:

> No person shall be * * * compelled in any criminal case to be a witness against himself.

STATEMENT

The requirement that police officers inform suspects of their right to remain silent before interrogating them is a settled feature of our criminal justice system: "[t]he Fifth Amendment privilege is so fundamental to our system of constitutional rule" that "if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain si-

lent." *Miranda v. Arizona*, 384 U.S. 436, 467-68 (1966). Without being made aware of that right, individuals cannot make "an intelligent decision as to its exercise." *Id.* at 468.

Insofar as is relevant in this case, the Court has made clear that police officers will be excused from the "[simple] expedient of giving an adequate warning" (*Miranda*, 384 U.S. at 468) only if they find themselves "in a situation posing a threat to the public safety." *New York v. Quarles*, 467 U.S. 649, 657 (1984). This "public safety exception to the requirement that *Miranda* warnings be given before a suspect's answers may be admitted into evidence" applies in a very "narrow" range of circumstances. *Id.* at 655, 658. In *Quarles*, officers "were confronted with the immediate necessity of ascertaining the whereabouts of a gun" that the defendant had just discarded in a busy supermarket. The Court reasoned that in such an emergency situation, it would be "untenable" to require officers to choose "in a matter of seconds" between foregoing the *Miranda* warning at the cost of future admissibility of the suspect's statements, or issuing the warning so as to preserve admissibility while undermining their ability to "neutralize the volatile situation confronting them." *Id.* at 657-58. To avoid such "on-the-scene balancing" dilemmas, the Court made clear that the public safety exception applies to questioning that relates to the "exigency which justifies" its application: officers may ask only those questions "necessary to secure their own safety or the safety of the public." *Id.* at 658-59.

In this case, the Eighth Circuit held the public safety exception recognized in *Quarles* to apply in very different circumstances: when police officers asked a suspect they had taken into custody whether

they might find something dangerous in an automobile that had been secured and was accessible neither to the suspect nor to the public. In doing so, as Judge Gruender noted below, the court of appeals effectively held that law enforcement officers may disregard *Miranda* prior to conducting almost any search, thus "stray[ing] from the Supreme Court's tethering of the exception to the existence of exigent circumstances." App., *infra*, 6a. That holding also exacerbated a growing conflict in the courts of appeals on the question; as Judge Gruender also noted, "[a]lthough the First Circuit agrees with our precedents, three other circuits do not." *Id*. at 10a. Further review by this Court, to resolve this conflict and provide much-needed guidance on the application of the public safety exception to *Miranda*, accordingly is warranted.

1. Police Officer Michael Adney stopped petitioner's vehicle in the early morning hours of August 18, 2005, for a noise violation. App., *infra*, 2a, 12a-13a. After speaking with petitioner and running a name check, Officer Adney determined that petitioner was barred from driving in Iowa and took him into custody. App., *infra,* 12a. Officer Adney searched petitioner before handcuffing him and placing him in the back of the squad car. App., *infra*, 13a.

Minutes later, Officer John Melvin arrived and assisted in searching petitioner's vehicle; Officer Adney continued to speak with petitioner. App., *infra*, 2a, 13a. During the search, Officer Melvin found an unloaded revolver under the driver's seat. App., *infra*, 2a, 13a. The officers stepped aside and discussed charging petitioner with carrying a concealed weapon. App., *infra*, 14a. They instead had petitioner, still handcuffed, exit the squad car. App., *in-*

fra, 2a, 14a. Although the officers had not read petitioner his *Miranda* rights, they began questioning him. App., *infra*, 2a, 14a.

Officer Adney asked: "Is there anything else in there we need to know about?" Before petitioner could respond, Officer Melvin interjected, "That's gonna hurt us?" Officer Adney then echoed, "That's gonna hurt us? Since we found the pistol already." Petitioner responded that "I knew it was there but * * * it's not mine," before telling the officers that there were no other weapons in his car. App., *infra*, 2a. The officers then patted petitioner down again and placed him back into the squad car. Petitioner's vehicle was subsequently transported to the police station where it was again searched. App., *infra*, 15a.

2. Petitioner, charged with being a felon in possession of a firearm, filed a motion to suppress his response to the officers' pre-*Miranda* questioning. Because he had not been advised of his *Miranda* rights, petitioner argued that his statement was obtained in violation of the Fifth Amendment.

The district court denied petitioner's motion to suppress, holding that the public safety exception to *Miranda* applies when police officers obtain a piece of information that "takes the facts outside of the routine and ordinary arrest scenario." App., *infra*, 17a. In the district court's view, discovery of the firearm was just such information, triggering the exception; the court believed that the firearm provided the officers with an objectively reasonable concern for their safety, which in turn warranted questioning prior to issuance of *Miranda* warnings. *Id.* at 19a-20a. After the district court denied his motion to

suppress, petitioner entered a conditional guilty plea. App., *infra*, 2a.

3. The Eighth Circuit affirmed, holding that the officers' questioning of petitioner fell within the public safety exception to *Miranda*. App., *infra*, 1a-11a. The court acknowledged that, at the time of the interrogation, petitioner "was handcuffed and under the control of the two officers, and there were no passengers or nearby members of the public who could have accessed or been harmed by the contents of [petitioner]'s car." *Id.* at 4a. Nevertheless, the court reasoned that "the risk of police officers being injured by the mishandling of unknown firearms or drug paraphernalia provides a sufficient public safety basis to ask a suspect who has been arrested and secured whether there are weapons or contraband in a car or apartment that the police are about to search." *Id*. at 5a (citing *United States v. Luker*, 395 F.3d 830, 832 (8th Cir. 2005), *cert. denied*, 546 U.S. 831 (2005)). The court concluded that, "when the officers found [petitioner's] concealed .38 caliber revolver, they had good reason to be concerned that additional weapons might pose a threat to their safety when they searched [petitioner's] car incident to a late-night arrest." *Ibid.*

In reaching its conclusion, the panel relied on *Luker* for the proposition that the "public safety exception applie[s] to post-arrest question[ing]" regarding whether "the police should know about" any objects in a driver's car. App., *infra*, 5a (citing *Luker*, 395 F.3d at 832). Judge Heaney had dissented in that case, reasoning that the public safety exception should apply only if the officers' "questions [are] necessary to secure the safety of officers or the public." 395 F.3d at 834. Judge Heaney concluded that application of the public safety exception, when the de-

fendant was arrested and handcuffed and no third parties posed any threat, would "expand the public safety exception far beyond its original scope." *Id.* at 835. Thus, he would have "reverse[d] the district court and f[ou]nd that Luker's statement d[id] not fall within the public safety exception." *Id.*

In this case, Judge Gruender concurred separately. App., *infra*, 5a-11a. Like Judge Heaney, he would have "conclude[d] that the public safety exception to *Miranda* would not apply because there is no evidence that an immediate danger existed." App., *infra*, 11a. In Judge Gruender's view, "the public safety exception to *Miranda* applies only when (1) an immediate danger to the police officers or the public exists, or (2) when the public may later come upon a weapon and thereby create an immediately dangerous situation." *Id.* at 9a. Here, the record established that there was neither an emergency nor any third parties who might have come upon a hypothetical second weapon. *Ibid.* To be sure, Judge Gruender reasoned, "the search of a vehicle that potentially contains a loaded weapon may well be inherently dangerous, [but] the record does not establish that any immediate danger" justified foregoing the *Miranda* warning. *Ibid.* Because Judge Gruender felt constrained by the Eighth Circuit's prior decision in *Luker*, he concurred in the panel's decision. *Id.* at 11a He noted, however, that the court's holding conflicted with decisions of the Fourth, Fifth, and Sixth Cicuits. *Id.* at 10a.

REASONS FOR GRANTING THE PETITION

The Eighth Circuit's holding represents an unwarranted expansion of the *Quarles* public safety exception to *Miranda*'s requirements. The decision below is inconsistent with *Quarles* because, in circum-

stances like those in this case, there is no immediate threat to public safety that would have required the arresting officers to undertake the sort of "on-the-scene balancing" that the *Quarles* Court sought to avoid. And the holding below dramatically undermines *Miranda* because virtually *every* search conducted by police officers involves the possibility of discovering a dangerous item and thus, according to the Eighth Circuit's holding, the "public safety" exception could apply to virtually every interrogation preceding a search. This significant expansion of the public safety exception to *Miranda* finds no support in the rationale for that rule. It therefore is not surprising that, although several courts of appeals agree with the approach taken below, at least three others have rejected it. Because this issue is one of great practical importance that arises frequently, this Court should grant review.

I. The Courts Of Appeals Are Divided On Whether the Public Safety Exception Comes Into Play Only When Questioning Is Needed To Avoid An Immediate Threat To the Safety Of The Public Or Of Law Enforcement Officials.

This case involves a widely acknowledged conflict in the circuits on the scope of the public safety exception to the *Miranda* requirement. In fact, "[a]pplying the public safety exception in the Fifth Amendment context where the defendant is already in handcuffs and is secure has presented a greater problem than th[is] Court predicted." *United States* v. *Jefferson*, No. 2:07-CR-311-WKW, 2008 WL 1848798 at *7 (M.D. Ala. April 24, 2008). See *United States* v. *Jones*, 154 F. Supp. 2d 617, 628 (S.D.N.Y. 2001) (courts have taken "divergent approaches to deter-

mining the breadth of the public safety exception"). That confusion warrants the Court's attention.

A. Three Circuits Require A Need For Immediate Questioning To Justify Interrogating Suspect Who Has Been Taken Into Custody But Has Not Received *Miranda* Warnings.

As Judge Gruender stated in his concurring opinion below, the Fourth, Fifth, and Sixth Circuits have held that the public safety exception to the *Miranda* requirement is *not* triggered by a police officer's fear of mishandling firearms, drug paraphernalia, or other dangerous items during a search under circumstances similar to those in this case.[1]

1. The decision below cannot be reconciled with the Fourth Circuit's holding in *United States* v. *Mobley*, 40 F.3d 688 (4th Cir. 1994). There, the court considered a situation in which officers were about to search the defendant's apartment. The apartment had already been secured and there were no third parties in the vicinity. An officer asked the defendant whether "there was anything in the apartment that could be of danger to the agents who would be staying to conduct the search warrant, such as a weapon." *Id.* at 691. The defendant confirmed that there was a weapon in the apartment and was later convicted on the basis of his statement. On appeal,

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[1] The Eighth Circuit majority itself acknowledged the conflict with the Sixth Circuit. See App., *infra*, at 5a (citing *United States* v. *Williams*, 483 F.3d 425 (6th Cir. 2007)). Its opinion additionally conflicts with three state intermediate appellate court decisions. See *State* v. *Stephenson*, 796 A.2d 274, 281 (N.J. Super. Ct.App. Div. 2002); *State* v. *Hendrickson*, 584 N.W.2d 774 (Minn. Ct. App. 1998); *Matter of John C.*, 519 N.Y.S.2d 223 (N.Y. App. Div. 1987).

the Fourth Circuit reversed the conviction, declining to apply the public safety exception "[a]bsent an objectively reasonable concern for immediate danger to police or public." *Id.* at 693. Noting that nothing "separate[d] the[] facts [of that case] from those of an ordinary and routine arrest scenario" (*ibid.*), the court rejected the government's argument that the risk of encountering a firearm during the course of the search constituted a threat to the public safety. *Ibid.*

The Fourth Circuit more recently confirmed that rule in *United States* v. *Melvin*, 2007 WL 2046735, at *11 (4th Cir. July 13, 2007), holding that the government must "demonstrate an immediate need that would validate protection under the *Quarles* exception." Therefore, when the *Melvin* court was presented with facts essentially identical to the situation in this case, it held that the public safety exception did not apply. One of the defendants in *Melvin* was arrested outside his apartment, shortly after police seized and began towing his truck, which was parked outside. After the defendant was arrested, but before he was given *Miranda* warnings, officers asked "if there was 'anything the agents needed to know about in the truck.'" *Id.* at *8. Although the officers in *Melvin*, like the officers here, faced the danger of coming across hidden weapons during a search of the car, the Fourth Circuit held the *Quarles* exception inapplicable. Indeed, the *Melvin* court suggested that the danger of coming upon a weapon during a search can never be sufficient on its own to trigger the public safety exception. *Id.* at *11 ("[T]he government did not admit evidence that the public had access to the impound lot so as to create a public danger. In the absence of such evidence, we are con-

strained to conclude that [the defendant's] * * * statements were improperly admitted.").

2. The Eighth Circuit's decision also conflicts with the Sixth Circuit's holding in *United States* v. *Williams*, 483 F.3d 425 (6th Cir. 2007). As in *Mobley*, officers in *Williams* entered the suspect's apartment and questioned him after he was no longer free to leave. They asked "if anybody else was in the room and if he had any weapon." *Id.* at 427. The court held the defendant's response, identifying the location of a gun, inadmissible, reasoning that "[t]he public safety exception applies if and only if" an officer has "a reasonable belief that he is in danger" because, "at minimum," (1) "the defendant might have (or recently have had) a weapon, and (2) * * * someone other than police might gain access to that weapon and inflict harm with it." *Id.* at 428. The court remanded the matter for the trial court to determine whether "someone other than police could access the weapon and inflict harm with it." *Id.* at 429. The Sixth Circuit's holding that the public safety exception applies if and only if a third party might "gain access to [a] weapon and inflict harm with it" cannot be reconciled with the decision below.

3. Finally, the panel's holding also conflicts with the Fifth Circuit's decision in *United States v. Raborn*, 872 F.2d 589 (5th Cir. 1989). There, the court considered a case with facts very similar to those in this case. Police officers had safely arrested the defendant during a traffic stop and there were no third parties on the scene. The officers believed the defendant had a weapon in his truck and, without issuing a *Miranda* warning, questioned him about the location of the gun. In response, the defendant admitted to having an illegal firearm in his truck. He was later convicted as a felon in possession and

sought to suppress both the statement and the weapon, which the government argued were admissible under *Quarles*. The court concluded:

> Unlike the situation in *Quarles*, however, when the gun was hidden in a place to which the public had access, Raborn's truck, where the police officers believed the gun to be, had already been seized and only the police officers had access to the truck. It is difficult therefore, to find that the public-safety exception applies.

Id. at 595.[2] This reasoning cannot be reconciled with the decision in this case. See also *United States v. Brathwaite*, 458 F.3d 376, 382 n.8 (5th Cir. 2006) (finding that where "agents had performed two sweeps of the house and had both occupants of the house in handcuffs," officers could not ask about the presence of weapons in the house).

B. In Contrast, Three Circuits, Including The Court Below, Allow Officers To Question An Arrested Suspect Without Giving *Miranda* Warnings Whenever Officers May Be Subject To A Future Danger.

For three other courts of appeals, the *Quarles* exception applies even in situations where the public or law enforcement officers do not face an imminent threat. These courts allow police officers to question suspects concerning that danger, regardless of the officers' ability to contain, postpone, or control the danger via other means. In these circuits, therefore, the danger that officers might reasonably fear coming

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[2] The court ultimately upheld entry of the firearm into evidence based on the inevitable discovery doctrine. See 872 F.2d at 595.

upon hidden weapons or other dangerous materials during a search is sufficient to justify questioning a suspect prior to giving *Miranda* warnings.

1. In the decision below, the Eighth Circuit held that "the risk of police officers being injured by the mishandling of unknown firearms or drug paraphernalia provides a sufficient public safety basis to ask a suspect who has been arrested and secured whether there are weapons or contraband in a car or apartment that the police are about to search." App., *infra*, 5a. Under this test, it is irrelevant whether officers had an urgent need to search the car or apartment. It also does not matter whether officers could, or did, secure the area to prevent public access. See also *Luker*, 395 F.3d at 833-34 (sufficient to justify pre-*Miranda* warning questioning that "officers were aware of Luker's history of methamphetamine use and were concerned about needles or substances associated with such use in the car").

2. The First Circuit also has allowed officers to question suspects who have not received *Miranda* warnings about weapons in a secured vehicle. *United States* v. *Fox*, 393 F.3d 52 (1st Cir. 2004), *vacated on other grounds*, 545 U.S. 1125 (2005). See App., *infra*, 10a (Gruender, J., concurring) ("[T]he First Circuit agrees with our precedents."). As in this case, the defendant in *Fox* had been arrested and placed in the officer's car. Nonetheless, the court held that the potential that a weapon could be hidden in the defendant's car was "ample reason [for the officer] to fear for his own safety and that of the public." 393 F.3d at 60. Moreover, once the officer found a gun, the First Circuit permitted him to question the suspect about its operation, finding that the danger of transporting a potentially loaded weapon

also was sufficient to trigger the *Quarles* exception. *Ibid.*

3. The Tenth Circuit has taken a similar approach. In *United States* v. *Phillips*, 94 Fed. Appx. 796 (10th Cir. 2004), which involved a house search, the Tenth Circuit specifically held that the danger of coming across a weppon was sufficient to trigger *Quarles*. "[T]he fact that the other residents of the house were secured did not completely eliminate the risk that a weapon hidden somewhere could pose a danger to one of them or to the police." *Id.* at 801 n.2.

II. The Decision Below Departs From *Quarles*, Which Recognized A Limited Exception To *Miranda* That Applies When There Is An Imminent Danger And Immediate Need for Questioning.

In addition, review is warranted because the decision below is inconsistent with this Court's approach in *Quarles*. The Court there recognized a "public safety" exception to *Miranda* that would govern a very narrow range of circumstances involving threats to the public or law enforcement officers. In *Quarles*, police officers, "in the very act of apprehending a suspect, were confronted with the immediate necessity of ascertaining the whereabouts of a gun" that the defendant had just discarded in a busy supermarket. 467 U.S. at 657. It was undisputed that the weapon "obviously posed more than one danger to the public safety: an accomplice might make use of it, [or] a customer or employee might later come upon it." *Id*. The Court concluded that in such an emergency situation, it would be "untenable" to require officers to decide "in a matter of seconds" whether to forego the *Miranda* warning at the cost of

admissibility of any incriminating statement, or to issue a warning that would preserve admissibility but undermine the officers' ability to "neutralize the volatile situation confronting them." *Id.* at 657-58. The *Quarles* Court therefore acknowledged the "public safety" exception expressly to avoid such untenable "on-the-scene balancing" dilemmas. *Id.* at 658.

None of the same concerns applies to a situation where, as here, police officers have arrested the suspect and placed him in their patrol car, and no third parties are in the vicinity who might come upon a weapon and threaten the officers or the public safety. In this case, petitioner was sitting quietly, handcuffed, inside a police cruiser. The officers had searched petitioner thoroughly for weapons and satisfied themselves that he was not armed or carrying anything dangerous. In this setting, the officers clearly were not faced with the "untenable" challenge of balancing, in a split-second, petitioner's Fifth Amendment rights against the public safety. They were in control of the scene, the vehicle could have been impounded and searched by the officers at their leisure (as, in fact, it subsequently was), and there simply "was no exigency requiring immediate action by the officers beyond the normal need expeditiously to solve a * * * crime." *Quarles*, 467 U.S. at 659 n.8.

In these circumstances, the Eighth Circuit's expansive reading of the public safety exception threatens to eviscerate *Miranda* with respect to most interrogations preceding a search. It is hard to imagine a scenario in which police officers about to conduct a vehicle search have greater control of the scene than the one that unfolded in this case: petitioner "was handcuffed and under the control of the two officers, and there were no passengers or nearby members of the public who could have accessed or

been harmed by the contents of [petitioner]'s car." App., *infra*, at 4a. Nevertheless, the court of appeals concluded that the officers were "were confronted with the immediate necessity of ascertaining" (*Quarles*, 467 U.S. at 657) whether there was another weapon in the car because they faced a "risk of * * * being injured by * * * mishandling" any evidence they might uncover. App., *infra*, 5a. But, of course, practically *every* search police officers conduct includes a risk of coming across evidence that might be dangerous. Following the rationale of the court below, officers will be free to interrogate suspects about their knowledge of dangerous contraband preceding any search, of any location or facility, without the "[simple] expedient of giving an adequate warning" (*Miranda*, 384 U.S. at 468) that the suspect may remain silent.

In fact, the situation in this case is much more similar to *Orozco* v. *Texas*, 394 U.S. 324 (1969), a case in which the Court ordered evidence suppressed, than it is to *Quarles*. Judge Gruender explained the parallel (App., *infra*, 8a):

> In *Orozco*, four police officers entered Orozco's boardinghouse and awakened him. 394 U.S. at 325. Without giving *Miranda* warnings,, the officers interrogated Orozco about a murder committed four hours earlier. The police asked if he had been present at the scene of the shooting, whether he owned a gun and where the gun was located. The defendant admitted that he was present at the scene, that he owned a pistol and that the pistol was located in the washing machine in a backroom of the boardinghouse. The *Orozco* Court held that all the statements should have been suppressed. *Id*. at 327.

Judge Gruender also observed (see App., *infra*, 8a) that *Quarles* specifically distinguished its circumstances from those in *Orozco*, explaining that "[i]n *Orozco*, * * * the questions about the gun were clearly investigatory; they did not in any way relate to an objectively reasonable need to protect the police or the public from any immediate danger associated with the weapon. In short there was no exigency requiring immediate action by the officers beyond the normal need expeditiously to solve a serious crime." 467 U.S. at 659 n.8.

As Judge Gruender accordingly concluded (App., *infra*, 8a-9a:

> Because the police reasonably suspected that Orozco committed murder with a gun, there existed a realistic possibility that the weapon was hidden somewhere in the boardinghouse. Had the Supreme Court believed the public safety exception applied to situations where officers could happen upon weapons "unexpectedly or mishandle[ ] them in some way," then the public safety exception would have been applicable in *Orozco*. However, the *Quarles* Court did not indicate that the inherent danger of a trained police officer discovering a weapon by itself was sufficient to justify the application of the exception.

That, however, is just the rule the Eighth Circuit derived from *Quarles* in this case.

By holding that the questioning of a suspect prior to the issuance of *Miranda* warnings is permissible even when there is no imminent danger, the decision below essentially creates a reasonableness or "convenience" exception to *Miranda*. But *Quarles* specifically rejected the idea of such a reasonableness

exception. See *Quarles*, 467 U.S. at 653 n.3 ("[T]he Fifth Amendment's strictures, unlike the Fourth's, are not removed by a showing of reasonableness.") (quoting *Fisher* v. *United States*, 425 U.S. 391, 400 (1976)). Such a rule cannot be applied consistently by police officers and courts. See *Dickerson* v. *United States*, 530 U.S. 428, 444 (2000) ("But experience suggests that the totality-of-the-circumstances test * * * is more difficult than *Miranda* for law enforcement officers to conform to, and for courts to apply in a consistent manner."). Given the great practical importance of holdings like the one below adopting such a rule – searches like the one in this case occur with great frequency[3] and law enforcement officers often will have reason to suspect the presence of guns or other dangerous materials[4] – further review in this case is warranted.

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[3] For example, the Bureau of Justice Statistics estimates that there were 854,990 car searches in 2005. See BUREAU OF JUSTICE STATISTICS SPECIAL REPORT, CONTACTS BETWEEN POLICE AND THE PUBLIC 2005 at 6, http: //www.ojp.gov/bjs/pub/pdf/ cpp05. pdf.

[4] Not only is finding guns or drug paraphernalia a very real possibility in many, if not most, criminal searches, but the high rate of gun ownership in the United States could be enough, under the Eighth Circuit's rule, to justify police officers in *always* asking about the presence of weapons in a house or car before searching it. Compare TOM W. SMITH, PUBLIC ATTITUDES TOWARDS THE REGULATION OF FIREARMS at Fig. 2 (March 2007), http://www-news.uchicago.edu/releases/07/pdf/070410. guns. norc.pdf (finding that 34.5% of households contain a gun) *with* NATIONAL RIFLE ASSOCIATION OF AMERICA, INSTITUTE FOR LEGISLATIVE ACTION, MORE GUNS, LESS CRIME (Sept. 28, 2007) *available at* http://www.nraila.org/ Issues/ Fact-Sheets/Read.aspx?id=206 (noting that numerous studies have found "almost half of all households have at least one gun owner").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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