No. 23-446

In The
Supreme Court of the United States

JUNJIE LI,

Petitioner,

v.

STATE OF RHODE ISLAND,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Rhode Island

BRIEF IN OPPOSITION

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QUESTION PRESENTED

A Rhode Island State Trooper conducted a valid traffic stop of a vehicle for a seatbelt violation. During the stop, the trooper detected the odor of raw or fresh marijuana emanating from the vehicle and observed abnormally nervous behavior on the part of the Petitioner. Based on those observations, and the fact that the Petitioner was traveling on a highway considered by law enforcement to be a drug trafficking corridor, the trooper requested that another state trooper respond with a drug-sniffing dog. Is the odor of raw or fresh marijuana a factor that may be considered when examining the totality of the circumstances to determine whether a law enforcement officer had reasonable suspicion of criminal activity to prolong a valid traffic stop?

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INTRODUCTION

Whether a police officer possessed reasonable suspicion of criminal activity sufficient to prolong a valid traffic stop is determined based on the information the officer possessed at the time and the totality of the circumstances. The Rhode Island Supreme Court examined the totality of the circumstances in this case and held that the Rhode Island State Trooper who prolonged the traffic stop had reasonable suspicion of criminal activity based on the odor of raw or fresh marijuana emanating from the Petitioner's car, the Petitioner's abnormal nervousness, and the brevity of the Petitioner's roundtrip from New York to Boston and route of travel along a known drug trafficking corridor. The Petitioner is wrong in suggesting that the Rhode Island Supreme Court held that the odor of marijuana alone can establish reasonable suspicion.

The Rhode Island Supreme Court's decision also sustained an interlocutory appeal of a trial court's decision granting the Petitioner's motion to suppress. No criminal conviction entered in the state court and the Petitioner has not been sentenced. The Rhode Island Supreme Court's decision is not final and, as a result, the Court lacks jurisdiction to decide this case under 28 U.S.C. § 1257(a).

There is also no conflict among state courts for this Court to resolve. It is illusory. Only six of the fourteen cases that the Petitioner claims give rise to a state court split address the issue of whether the odor of marijuana may be considered as part of a reasonable

suspicion analysis. The decisions in five of those cases are consistent with each other and the sixth is readily distinguishable.

The Petitioner also misinterprets the Rhode Island Supreme Court's decision. The court did not hold that the odor of raw or fresh marijuana alone is sufficient to establish reasonable suspicion, a position that the Petitioner claims is held by four other states and that he believes erroneously ignores changes to state laws decriminalizing the possession of small amounts of marijuana. The Rhode Island Supreme Court instead clearly and unambiguously held that the odor of raw or fresh marijuana was a factor to be considered when examining the totality of circumstances. That is the position the state courts that the Petitioner suggests have correctly decided this issue have taken.

The petition for writ of certiorari should be denied.

STATEMENT OF THE CASE

On May 25, 2019, Rhode Island State Trooper Justin Andreozzi ("Officer Andreozzi") was monitoring northbound traffic on Interstate 95 while parked under an overpass in Exeter, Rhode Island. Pet. App. 4a. At approximately 11:16 that morning, Officer Andreozzi observed a Ford Taurus with New York license plates traveling north and saw that the front-seat passenger, later identified as Zhong Kuang, was sleeping and not wearing a seatbelt. *Id.* at 4a-5a. Officer Andreozzi pulled into traffic and attempted to catch up

with the vehicle to conduct a traffic stop for the seatbelt violation. *Id.* at 5a. When Officer Andreozzi pulled up behind the vehicle, he saw Kuang sit up and look over his shoulder at Officer Andreozzi's cruiser and fasten his seatbelt. *Id.* Officer Andreozzi activated the emergency lights on his cruiser and the vehicle pulled over in the breakdown lane. *Id.*

Officer Andreozzi exited his cruiser and approached the passenger side of the vehicle to avoid standing directly in the highway. *Id.* As he did, Officer Andreozzi saw that there were two men in the vehicle, Petitioner Junjie Li, who was driving, and Kuang, the passenger. *Id.* Officer Andreozzi told the Petitioner that he stopped the car because Kuang was not wearing a seatbelt and asked the Petitioner for his license, registration, and proof of insurance. *Id.* at 5a-6a. After the Petitioner provided the requested information, Officer Andreozzi asked the Petitioner why the vehicle was registered in someone else's name and the Petitioner explained that the car belonged to Kuang, his uncle. *Id.* at 6a. The Petitioner said the two were driving from New York to Boston to visit a friend for a couple of hours and then driving back to New York. *Id.* The Petitioner added that he was driving because Kuang was tired. *Id.*

Officer Andreozzi noticed that the Petitioner, who did not appear nervous when Officer Andreozzi first approached the vehicle, started exhibiting nervous behavior and became increasingly anxious as they spoke. *Id.* at 6a, 31a. The Petitioner's chest was pounding and his neck was pulsing, and, even though the

temperature was mild, the Petitioner began to perspire. *Id.* at 6a, 31a. Andreozzi later explained "that, in his experience, [the Petitioner's] nervousness 'was above where someone is nervous because they were stopped for the passenger . . . not wearing a seatbelt.'" *Id.* at 31a.

While standing at the front passenger window of the vehicle, Officer Andreozzi noticed "a 'slight odor of fresh marijuana' coming from inside the vehicle." *Id.* at 6a. At the suppression hearing, Andreozzi testified that there was no question in his mind that he smelled raw marijuana, and explained that, although he wrote in his post-arrest report that he detected a "slight odor of fresh marijuana[,]" he considered it "slight" because, based on the "[ninety-four] pounds of marijuana which is what was later located, I would have thought that it would have had a stronger odor. . . ."

Officer Andreozzi asked the Petitioner to get out of his car for officer safety, to separate the Petitioner and Kuang, and so that he could ask the Petitioner questions without prolonging the traffic stop. *Id.* at 6a-7a. The Petitioner complied with the request and sat in the front passenger seat of Officer Andreozzi's cruiser while Officer Andreozzi performed various law enforcement checks. *Id.* at 6a-7a.

Officer Andreozzi asked the Petitioner if there was any illegal contraband in his car such as firearms, cocaine, or methamphetamines and the Petitioner said there was not. *Id.* at 7a. When Officer Andreozzi then asked if there was any marijuana in the car, the

Petitioner paused and Officer Andreozzi saw him "'target glance'" the rear of Kuang's car, before turning back to Officer Andreozzi and responding that there was not. *Id.* at 7a. According to Officer Andreozzi, a "target glance" is a nonverbal indicator of criminal activity, in particular, the transportation of narcotics. *Id.* at 7a-8a.

Based on the odor of raw or fresh marijuana that he detected, the Petitioner's abnormal nervousness, and the brevity of the Petitioner and Kuang's trip to Boston and their route of travel along a known drug trafficking corridor, Officer Andreozzi called for backup and asked that Rhode Island State Trooper James D'Angelo ("Officer D'Angelo") respond with a K-9 trained in marijuana detection. *Id.* at 8a. When Officer D'Angelo arrived, Kuang got out of his car and, when he did so, Officer Andreozzi again smelled the odor of fresh marijuana. *Id.* at 8a. Officer D'Angelo walked the dog around Kuang's car; when he reached the rear, the dog placed his nose on the trunk seal and sat down, indicating the presence of a narcotic odor. *Id.* Approximately fifteen minutes had elapsed between the time that Officer Andreozzi pulled the Petitioner and Kuang over and when the dog alerted to the narcotic odor. *Id.*

Officer Andreozzi opened the vehicle's trunk and he and Officer D'Angelo saw "five large laundry-style bags containing a total of ninety-four (94) approximately one-pound vacuum-sealed bags of suspected marijuana." *Id.* The troopers arrested the Petitioner and Kuang and arranged for their vehicle to be towed to the state police barracks where the suspected

marijuana was tested and the troopers conducted an inventory search of the vehicle. *Id.* at 8a-9a. The field test yielded "a positive response to the presumptive presence of marijuana" and the officers discovered a set of metal nunchucks in the driver's side door during the inventory search. *Id.* at 9a. When searching the Petitioner, the officers discovered a substantial sum of money in his wallet. *Id.*

The State charged the Petitioner and Kuang with possession with intent to deliver marijuana and possession of one to five kilograms of marijuana and also charged the Petitioner with possession of the metal nunchucks. *Id.* at 9a. The Petitioner and Kuang each moved to suppress the marijuana seized from Kuang's car in the Rhode Island Superior Court. *Id.* at 9a.

A trial justice held a hearing on the motions to suppress and three months later issued a decision granting the motions. *Id.* at 9a. The trial justice first found that Officer Andreozzi impermissibly prolonged the traffic stop when he removed the Petitioner from the car because that "was a deviation from the mission of the traffic stop. . . ." *Id.* The trial justice then concluded that Officer Andreozzi's prolonging of the traffic stop was not reasonable. *Id.* The trial justice found that the Petitioner's " 'nervousness, coupled with the *slight* odor of marijuana and the location of the traffic stop being in a known drug trafficking corridor' was insufficient to establish reasonable suspicion to prolong the stop." *Id.* at 10a; *see also id.* at 20a-21a. With respect to the odor of raw marijuana, the trial justice stated that he could not "ignore the effect the

decriminalization of marijuana has on motor vehicle stops" and that he therefore could not consider the odor of marijuana when making a reasonable suspicion determination. *Id.* at 21a.

The State timely noticed an interlocutory appeal of the trial justice's order to the Rhode Island Supreme Court, *id.* at 11a; *see also* R.I. Gen. Laws § 9-24-32; R.I. Gen. Laws § 9-24-33, and that court issued a four-to-one decision vacating the trial justice's orders on July 27, 2023. *See* Pet. App. 3a-33a (*State v. Li*, 297 A.3d 908 (R.I. 2023)). The court first held that the trial court erred in concluding that Officer Andreozzi impermissibly prolonged the traffic stop when he removed the Petitioner from his vehicle, *id.* at 17a-20a, a holding that the Petitioner does not challenge. The court then addressed how the odor of marijuana affects a reasonable suspicion determination in light of the decriminalization and subsequent legalization of marijuana in Rhode Island. *Id.* at 21a-27a. Noting that Rhode Island law "did not legalize the possession of marijuana full stop," but rather only permitted individuals to possess up to one ounce of marijuana for recreational purposes, the court rejected the Petitioner's "position that law enforcement officers may not rely upon the odor of marijuana, with no other facts indicating quantity, to establish reasonable suspicion." *Id.* at 26a-27a. The court held that the odor of raw or fresh marijuana remained a factor to be considered when analyzing the "totality of the circumstances, reasonable suspicion of criminal activity analysis. . . ." *Id.* at 27a.

The court then found "that the trial justice's reasonable-suspicion analysis was flawed in two respects." *Id.* at 29a. First, the trial justice erred by not considering a totality of the circumstances analysis when making a reasonable suspicion determination and "instead individually considered each circumstance that Officer Andreozzi relied upon to develop reasonable suspicion." *Id.* Second, the trial justice "gave little to no weight to Officer Andreozzi's law enforcement training and experience," despite acknowledging that Rhode Island law required courts to do so, and specifically referenced Officer Andreozzi's observations of the Petitioner's abnormal nervousness. *Id.* at 30a-33a.

The Rhode Island Supreme Court concluded that the facts and circumstances of the case sufficiently established that reasonable suspicion existed to prolong the traffic stop and that the trial justice erred in granting the motions to suppress. *Id.* at 32a-33a.

> Considering the situation as a whole, and affording Officer Andreozzi's decade-plus of law enforcement experience due deference, we are satisfied that the facts and circumstances identified above were sufficiently specific and articulable for Officer Andreozzi to have developed reasonable suspicion that criminal activity was afoot, justifying the prolongation of the stop. While we acknowledge that defendants' nervousness and their route of travel on a public highway were not strong indicators of criminal activity in and of themselves, when considering the totality of the

> circumstances from the vantage point of an experienced police officer, defendants' abnormal nervousness and route of travel of short duration, coupled with the odor of marijuana, could very well create a reasonable suspicion that the defendants were engaged in some sort of criminal activity. Additionally, we believe that Officer Andreozzi's conduct was reasonably responsive to the circumstances justifying the stop in the first place, as augmented by information gathered during the stop, and that Officer Andreozzi diligently pursued a means of investigation that was likely to confirm or dispel his suspicions quickly.

Id. at 32a-33a (citations and footnote omitted).

REASONS FOR DENYING THE PETITION

The Petitioner asserts that the Rhode Island Supreme Court held that the odor of raw or fresh marijuana alone is sufficient to provide the reasonable suspicion necessary to prolong a traffic stop. The Petitioner claims that Rhode Island is one of five states to reach this conclusion. He further avers that this is a position that pre-dated amendments to state laws decriminalizing the possession of small amounts of marijuana, and suggests that Rhode Island falls on the wrong side of a split among state courts of last resort with respect to this issue.

This Court lacks jurisdiction to review the Rhode Island Supreme Court's decision because it does not constitute a final judgment. Moreover, the Petitioner misinterprets the Rhode Island Supreme Court's decision and manufactures the so-called split among the state courts.

I. This Court Lacks Jurisdiction To Review This Case Under 28 U.S.C. § 1257(a) Because No Final Judgment Entered In State Court.

This Court lacks jurisdiction to decide this case. Title 28, section 1257(a), of the United States Code authorizes this Court "to review '[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had . . . where any title, right, privilege, or immunity is specially set up or claimed under the Constitution.'" *Florida v. Thomas*, 532 U.S. 774, 777 (2001) (quoting 28 U.S.C. § 1257(a)). A criminal case is generally final when a judgment of conviction enters and a defendant is sentenced. *See id.*; *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 54 (1989).

The Petitioner has not been convicted or sentenced in state court. The Petitioner is instead seeking review of a decision sustaining the State of Rhode Island's appeal of a pretrial order that the trial justice entered suppressing evidence seized during the traffic stop. The Rhode Island Supreme Court's decision sustaining the State's interlocutory appeal is not final—the state

court remanded the Petitioner's case to the trial court for further proceedings—and therefore not reviewable.

In certain circumstances, this Court has "'treated state-court judgments as final for jurisdictional purposes although there were further proceedings to take place in the state court.'" *Thomas*, 532 U.S. at 777 (quoting *Flynt v. Ohio*, 451 U.S. 619, 620-21 (1981) (per curiam)). In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), this Court identified four categories of cases that it treats as final for jurisdictional purposes even though no final judgment entered in state court. *See Thomas*, 532 U.S. at 777. None of the four exceptions applies here.

The first two *Cox Broadcasting* categories involve cases in which "the federal issue would not be mooted or otherwise affected by the proceedings yet to be had because those proceedings have little substance, their outcome is certain, or they are wholly unrelated to the federal question." *Cox Broadcasting Corp.*, 420 U.S. at 478; *see also Thomas*, 532 U.S. at 777-79. That is not the case here. Should the Petitioner either enter a plea to the criminal charges in state court before trial or be acquitted of the charges after trial, the issue of whether the odor of raw or fresh marijuana may be considered in a reasonable suspicion analysis would be moot.

The third *Cox Broadcasting* category of cases are those in which "'the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the

federal issue cannot be had, whatever the ultimate outcome of the case. . . .'" *Thomas*, 532 U.S. at 779 (quoting *Cox Broadcasting Corp*., 420 U.S. at 481). This exception does not apply here because the defendant may seek review of the suppression decision if convicted after trial.

The fourth and final *Cox Broadcasting* category of cases includes those in which

> 'the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceedings still to come. In these circumstances, if a refusal immediately to review the state-court decision might seriously erode federal policy, the Court has entertained and decided the federal issue, which itself has been finally determined by the state courts for purposes of the state litigation.'

Thomas, 532 U.S. at 780 (quoting *Cox Broadcasting Corp.*, 432 U.S. at 482-83). The arguments that the Petitioner makes here are common to those raised in decisions denying motions to suppress and the reversal of the Rhode Island Supreme Court's decision would

not preclude further litigation, but rather, simply determine the admissibility of evidence in the state criminal case. This exception does not apply.

No judgment of conviction and sentence has entered in state court, meaning that the decision of the Rhode Island Supreme Court is not final. Since this case does not fall into any of the categories of cases identified in *Cox Broadcasting* that this Court will treat as final for jurisdictional purposes even in the absence of a final state court judgment, the Court lacks jurisdiction to hear this case under 28 U.S.C. § 1257(a).

II. The Rhode Island Supreme Court Did Not Hold That The Odor Of Raw Or Fresh Marijuana Alone Is Sufficient To Establish Reasonable Suspicion To Prolong A Traffic Stop.

The Rhode Island Supreme Court did not, as the Petitioner suggests, hold that the odor of marijuana alone is sufficient to provide the reasonable suspicion necessary to prolong a traffic stop. *See* Pet. 15-17, 23-26. The court correctly observed that, as a general matter, "reasonable suspicion 'takes into account "the totality of the circumstances—the whole picture."'" Pet. App. 14a (quoting *Navarette v. California*, 572 U.S. 393, 397 (2014); *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

The court then summarized the state of Rhode Island law at the time of this traffic stop. Pet. App. 24a-27a. The court observed that, while the possession of a

small amount of marijuana had been decriminalized under the Rhode Island Controlled Substances Act ("Act"), it was not legalized and the Rhode Island General Laws continued to define marijuana as a controlled substance and contraband. *Id.* at 25a. Turning to the impact that these changes to state law had on the reasonable suspicion analysis, the court rejected the Petitioner's contention that law enforcement officers may not rely on the odor of raw or fresh marijuana to establish reasonable suspicion "with no other facts indicating quantity . . . ," noting that such a standard would be impracticable. *Id.* at 27a.

The court did not hold, however, that the odor of raw or fresh marijuana alone was sufficient to establish reasonable suspicion. To the contrary, the court held that the odor, regardless of how strong or slight, was a factor that may be considered when examining the totality of circumstances:

> [I]t is our opinion that the odor of raw or fresh marijuana, standing alone, remains a factor to be considered in a totality of the circumstances, reasonable suspicion of criminal activity analysis because possession of marijuana by an individual that exceeds the amounts permitted by statute remains a crime subject to arrest and prosecution.

Id. at 27a (citing R.I. Gen. Laws § 21-28.11-18(b)).

The Rhode Island Supreme Court then determined that Officer Andreozzi possessed reasonable suspicion to prolong the traffic stop based on the

totality of the circumstances. *Id.* at 27a-33a. The court based its conclusion on: (1) the fact that Officer Andreozzi smelled the odor of raw or fresh marijuana; (2) Officer Andreozzi's observations of the Petitioner during the traffic stop; and (3) the short duration of the Petitioner and Kuang's roundtrip from New York to Boston and their route of travel. Pet. App. 29a-33a. Although the Petitioner describes the nervousness that Officer Andreozzi observed as "natural and meaningless," Pet. i, that seemingly reflects the trial justice's description, which the Rhode Island Supreme Court rejected.

The Petitioner's contention that the Rhode Island Supreme Court erroneously held that the odor of raw or fresh marijuana alone is sufficient to establish reasonable suspicion to prolong a traffic stop is incorrect.

III. There Is No Conflict Among State Courts Of Last Resort Regarding The Role That The Odor Of Raw Or Fresh Marijuana Plays When Determining Whether There Is Reasonable Suspicion Of Criminal Activity Sufficient To Prolong A Traffic Stop.

The Petitioner asks the Court to resolve what he suggests is a significant split among the state courts as to how the odor of raw or fresh marijuana may be considered when determining whether a law enforcement officer possessed reasonable suspicion to prolong a traffic stop. Pet. 15-26. He asserts that at least nine states—Alaska, Colorado, Massachusetts, Michigan,

Minnesota, New Hampshire, Oregon, Pennsylvania, and Vermont—"have determined that the odor of marijuana during a traffic stop, without more, does not provide reasonable suspicion to prolong the stop . . . ," Pet. 15, 17-23, while five states—Arizona, Illinois, Maryland, Oklahoma, and Rhode Island—have found that "decriminalization does not change the law with regard to the odor of marijuana" and hold that odor alone may establish reasonable suspicion, Pet. 15, 23-26.

The Petitioner not only misinterprets the Rhode Island Supreme Court's decision in this case, but he also manufactures the split that he asserts this Court needs to resolve. The issue in this case is how the odor of raw or fresh marijuana may be considered in a reasonable suspicion analysis. While the Petitioner suggests that fourteen states have addressed this issue and reached different conclusions, he also seems to acknowledge—correctly—that is not really the case.

Three of the cases that the Petitioner cites—one of which is an intermediate appellate court decision—did not involve traffic stops, but rather addressed whether the odor of marijuana established probable cause for issuance of a search warrant for a home or warehouse, *see State v. Sisco*, 373 P.3d 549, 551-54 (Ariz. 2016); *State v. Crocker*, 97 P.3d 93, 94-97 (Alaska Ct. App. 2004), or to make an arrest, *see In re: D.D.*, 277 A.3d 949, 955-56, 963-65 (Md. 2022), which the Petitioner acknowledges. *See* Pet. 16, 22, 24-25. This case does not involve the issuance of a search warrant and the

Petitioner was not arrested based on the odor of marijuana.

Five of the cases that the Petitioner cites—one of which is an intermediate appellate court decision that is being appealed—addressed whether the odor of marijuana established probable cause to search a vehicle pursuant to the automobile exception to the warrant requirement of the Fourth Amendment. *See State v. Torgerson*, 995 N.W.2d 164, 174-75 (Minn. 2023); *People v. Armstrong*, No. 360693, 2022 WL 17169566, at *1-2, 5-6 (Mich. Ct. App. 2022), *appeal pending*, *People v. Armstrong*, 996 N.W. 2d 481 (Nov. 3, 2023); *Commonwealth v. Barr*, 266 A.3d 25, 41 (Pa. 2021); *State v. Roberson*, 492 P.3d 620, 623-24 (Okla. Crim. App. 2021); *People v. Zuniga*, 372 P.3d 1052, 1059 (Colo. 2016). This case does not involve a search pursuant to the automobile exception. Moreover, "'reasonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence. . . ." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000).

Including this case, only six of the fourteen cases that the Petitioner cites addressed the issue of whether the odor of marijuana may be considered when analyzing whether there is reasonable suspicion to prolong a traffic stop. *See State v. O'Brien*, 301 A.3d 370, 377 (N.H. 2023); *State v. Moore*, 488 P.3d 816, 819-23 (Or. Ct. App. 2021); *State v. Nagel*, 232 A.3d 1081, 1087-88 (Vt. 2020); *In re O.S.*, 112 N.E.3d 621, 634 (Ill. App. Ct. 2018); *Commonwealth v. Cruz*, 945 N.E.2d 899, 907-11 (Mass. 2011). Four cases, including this one, hold that

the odor of marijuana is a factor that may be considered in a reasonable suspicion analysis. Only one case, that of the Illinois Appellate Court, holds that the odor of marijuana alone is sufficient to establish reasonable suspicion and that case involved the odor of burnt marijuana, not raw or fresh marijuana. *See In re O.S.*, 112 N.E.3d at 634.

One final point. When summarizing the Rhode Island laws decriminalizing the possession of small amounts of marijuana, the Petitioner briefly suggests that law enforcement officers may not rely on the odor of marijuana to establish reasonable suspicion unless the officers can identify the quantity of marijuana emitting the odor. *See* Pet. 33. None of the cases that the Petitioner contends correctly decided the reasonable suspicion issue condition the use of odor as a factor to be considered on the strength of the odor, which varied in each case. *See*, *e.g.*, *O'Brien*, 301 A.3d at 373, 377 ("strong odor"); *Moore*, 488 P.3d at 818-19 ("very strong odor"); *Nagel*, 232 A.3d at 1087-88 ("faint smell of burnt marijuana"). Nor does the Petitioner contend that quantity is material to the split in state court decisions that he asserts needs to be addressed.

There simply is no split among state courts of last resort regarding whether the odor of raw or fresh marijuana may be considered when examining the totality of the circumstances as part of a reasonable suspicion analysis.

IV. The Massachusetts Cases That The Petitioner Cites As Examples Of His Argument Are Inapposite.

The Petitioner asserts that Massachusetts had a decriminalization statute similar to Rhode Island's and cites eight Massachusetts cases that he claims exemplify his arguments. Those cases are inapposite.

Only one of the six cases that the Petitioner cites addressed the issue of whether reasonable suspicion existed to prolong a traffic stop. *See Commonwealth v. Cordero*, 74 N.E.3d 1282, 1289-92 (Mass. 2017). There is no indication, however, that the trooper who effectuated that traffic stop smelled the odor of marijuana, either burnt or fresh. *See id.* The trooper instead prolonged the stop based on the extreme nervousness of the defendant, what the trooper believed to be "evasive answers" about where he was traveling from and to, and the trooper's opinion that the city in which the defendant lived was "a 'major drug source city.'" *Id.*

Four of the cases that the Petitioner cites address whether the odor of burnt or raw or fresh marijuana establishes probable cause to search a vehicle under the automobile exception to the warrant requirement of the Fourth Amendment, which is not at issue here. *See Commonwealth v. Craan*, 13 N.E.3d 569, 577-79 (Mass. 2014); *Commonwealth v. Overmyer*, 11 N.E.3d 1054, 1057-60 (Mass. 2014); *Commonwealth v. Daniel*, 985 N.E.2d 843, 848-49 (Mass. 2013); *Cruz*, 945 N.E.2d at 911-15. Another case addresses the issue of whether the detection of an odor of burnt marijuana coming

from a vehicle alone provides sufficient grounds to initiate a traffic stop. *See Commonwealth v. Rodriguez*, 37 N.E.3d 611, 617-20 (Mass. 2015). One of the two remaining cases is an intermediate appellate court decision holding that the odor of marijuana, presence of air fresheners in a car, and nervousness of defendants do not warrant reasonable suspicion to issue exit orders to conduct "patfrisks," *Commonwealth v. Locke*, 51 N.E.3d 484, 489-90 (Mass. App. Ct. 2016), while the other involved a warrantless search of an individual sitting on a park bench and his backpack, *see Commonwealth v. Jackson*, 985 N.E.2d 853, 854-60 (Mass. 2013).

V. This Case Is A Poor Vehicle For Deciding Whether The Odor Of Marijuana May Be Considered When Examining Whether The Totality Of The Circumstances Establish Reasonable Suspicion To Prolong A Traffic Stop.

This case is not the proper vehicle for addressing whether the odor of marijuana may be used to establish reasonable suspicion for at least three reasons.

First, there is a fundamental threshold question about whether this Court has jurisdiction to review this case because of the lack of a final judgment in the state court. If this Court determines that it lacks jurisdiction for the reasons discussed above, then the underlying merits will not be addressed.

Second, the reasonable suspicion necessary to prolong a traffic stop depends on the information that a law enforcement officer possesses at the time and how reliable it is. *See Navarette*, 572 U.S. at 397. That determination is inherently fact-specific. The impact of a decision as to whether Officer Andreozzi possessed reasonable suspicion to prolong this traffic stop would not extend beyond this case.

Third, state laws governing marijuana possession differ from state to state—some states have decriminalized the possession of small amounts, some have legalized it, and some have legalized marijuana only for medical purposes—and, according to the Petitioner, are presently changing or evolving. *See* Pet. 26-31. The Rhode Island Supreme Court only addressed how the odor of marijuana may be considered in light of amendments to Rhode Island law decriminalizing the possession of less than an ounce of marijuana. The Petitioner is asking this Court to decide issues that were not raised or decided in that court, such as whether the odor of marijuana alone may establish reasonable suspicion in states that have legalized the possession of small amounts of marijuana.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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