No. _____

In the Supreme Court of the United States

RICCO SAINE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Andrew S. Pollis
Counsel of Record
MILTON AND CHARLOTTE KRAMER LAW CLINIC
CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW
11075 East Blvd
Cleveland, OH 44106
(216) 368–2766
andrew.pollis@case.edu

Attorney for Petitioner

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QUESTION PRESENTED

In 2018, Congress removed hemp from the Controlled Substances Act and placed it into the stream of lawful interstate commerce. Now-legal hemp and illegal marijuana derive from the same plant and produce the same odor; no K9 or field test can tell them apart. In this case, a police K9 trained to detect cannabis (in all its forms, legal and illegal) alerted to petitioner's vehicle, prompting a search that spawned no drug-related charges. But the search revealed a firearm, which the Government convicted the petitioner of possessing under 18 U. S. C. §§ 922(g)(1) and 924(e)(1). The Sixth Circuit affirmed that conviction, holding that the dog alert supplied probable cause for the vehicle search and that petitioner had failed to meet his burden to prove otherwise.

The question presented is:

Whether a drug-detection dog's alert to cannabis—a substance that encompasses both legal hemp and illegal marijuana—provides probable cause to conduct a warrantless vehicle search when the alert may signal more than "the presence or absence of narcotics, a contraband item." See *United States* v. *Place,* 462 U. S. 696, 707 (1983); see also *Illinois* v. *Caballes,* 543 U. S. 405, 409 (2005).

PARTIES TO THE PROCEEDING

Petitioner, and defendant-appellant below is Ricco Saine.

Respondent, and plaintiff-appellee below is United States of America.

RELATED PROCEEDINGS

United States District Court (EDTN):

United States v. *Ricco Saine*, No. 2:21-cr-00109-1 (Apr. 25, 2023) (motion for suppression of evidence denied)

United States v. *Ricco Saine*, No. 2:21-cr-00109-1 (Jul. 3, 2024) (conviction)

United States Court of Appeals (CA6):

United States v. *Ricco Saine*, No. 24-5638 (Dec. 22, 2025) (conviction affirmed)

United States v. *Ricco Saine*, No. 24-5638 (Jan. 22, 2026) (rehearing denied)

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JURISDICTION

The Sixth Circuit's opinion was issued on December 22, 2025. The Sixth Circuit denied rehearing on January 22, 2026. This Court has jurisdiction under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U. S. Const., Amdt. IV.

The Agriculture Improvement Act of 2018 defines hemp as "the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." 7 U. S. C. § 1639*o*(1).

STATEMENT OF THE CASE

I

On August 27, 2021, Officer Aaron Blevins of the Kingsport Police Department approached Ricco Saine's truck in the Westside Inn parking lot in Kingsport, Tennessee. App. 2. The officer believed the parking lot was a "known drug location" and "called for a K9 unit." App. 2. Roughly ten minutes later, the K9 unit arrived with a dog trained to detect the odors of methamphetamines, cocaine, heroin, and all forms of cannabis. App. 2–3. The dog was not trained to distinguish "between legal cannabis and marijuana." App. 3.

The K9 alerted to Saine's vehicle, and a subsequent search ensued that found a "small amount of what appeared to be marijuana," though the record contains no evidence that it actually was marijuana. App. 3. The officers also found a Ruger EC9S handgun. App. 3. A few weeks later, Officer Mike Slater discovered two firearms at the home Saine shared with his wife. App. 3. Saine had a prior felony conviction, so the Government charged him with two counts of unlawful possession of a firearm—one based on the Ruger found in his truck (Count 1), the other based on two firearms found in the marital home (Count 5).[1] App. 4 (citing 18 U. S. C. §§ 922(g)(1), 924(e)(1)). The lower courts did not address the connection (for purposes of either the probable-cause analysis or the evidence admitted

[1] Trial did not proceed on the other indicted counts.

at trial) between the initial K9 search and the discovery of the firearms in the marital home.[2]

II

This case arises at the intersection of three lines of this Court's precedent and the decisions of both Congress and the Tennessee legislature to legalize hemp. In *United States* v. *Place*, this Court held that a canine sniff is not a Fourth Amendment search because it "discloses only the presence or absence of narcotics, a contraband item." 462 U. S. 696, 707 (1983). That holding rested on a premise of flawless accuracy: all cannabis was contraband, so a dog that detects only cannabis detects only contraband. This Court relied on that same premise in reaffirming the *Place* holding in *Illinois* v. *Caballes*, 543 U. S. 405, 408–10 (2005). And in *Florida* v. *Harris*, this Court held that the evidence that a dog was trained or certified before deployment creates a presumption of reliability. 568 U. S. 237, 248 (2013). That holding, once again, rested on a premise of flawless accuracy—that a reliable dog alerts only to contraband. *Id.* at 246.

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[2] Reversal of the probable-cause determination underlying the search of petitioner's vehicle would also be potentially dispositive of Count 5. The lower courts would also have to assess whether evidence supporting Count 5 was the fruit of the original unlawful search, warranting suppression of that evidence too. See *Wong Sun* v. *United States*, 371 U. S. 471, 484–85 (1963). And, even if discovery of the Count 5 evidence was not fruit of the poisonous tree, the detailed testimony the jury heard about the vehicle search and discovery of the Ruger charged in Count 1 would require a retrial because of its prejudicial spillover effect on Count 5. See, *e.g.*, *United States* v. *Rooney*, 37 F. 3d 847, 855 (CA2 1994).

In 2018, Congress changed the legal landscape. The Agriculture Improvement Act legalized hemp—the same plant as marijuana, distinguished only by its delta-9 THC concentration. 7 U. S. C. § 1639*o*(1). Tennessee followed suit. Tenn. Code Ann. § 39-17-402(16)(C). Hemp is a lawful agricultural commodity that may be produced, sold, and transported in interstate commerce. 7 U.S.C. § 1639p(f); Pub. L. No. 115-334, § 10114. After the legislative change, a dog trained to detect cannabis still does so with flawless accuracy—but accurate detection of cannabis is no longer equivalent to detection of contraband. See 7 U. S. C. § 1639*o*(1).

III

Saine moved to suppress evidence of the firearm, arguing that the K9 could not differentiate between legal substances, such as hemp, and illegal marijuana. The magistrate judge issued a report and recommendation denying the motion. App. 14. The district court adopted it.[3] App. 26.

The case proceeded to a jury trial. The jury convicted Saine, and the district court sentenced him to 282 months of incarceration, five years of supervised release, and a $200 assessment. App. 28.

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[3] The district court, before adopting the magistrate's report and recommendation, had suspended all deadlines to object to it. The district court then adopted the report and recommendation without resetting those deadlines, thus depriving Saine of an opportunity to object under Fed. R. Crim. P. 59(a). That procedural glitch is no barrier to this Court's review, as the plain language of the rule defeats an argument of forfeiture. See *ibid.* (deferring fourteen-day objection deadline to "some other time the court sets" in these circumstances). See also App. 6.

The Sixth Circuit affirmed. App. 1. The court acknowledged that drug-detection dogs trained on marijuana also alert to legal hemp, but held that probable cause "does not require officers to eliminate alternative innocent explanations." App. 7. So, the fact that the K9 "could have merely smelled . . . legal cannabis . . . does not necessarily negate probable cause." App. 7. The court acknowledged that "there may come a day" when hemp's prevalence undermines the reliability of odor-based cannabis detection but concluded on the "sparse record" before it that the day had not arrived. App. 8.

REASONS FOR GRANTING THE PETITION

I. A K9 Alert Supplies No Probable Cause for a Fourth Amendment Search if the K9 is Trained to Detect Legal Substances, Such as Hemp.

In 2018, Congress legalized hemp, the same plant as marijuana. Hemp is distinguishable from marijuana only by its concentration of tetrahydrocannabinol (commonly known as THC). Both substances derive from the plant genus *Cannabis*. They are virtually identical in smell, texture, and appearance. Neither trained narcotics dogs nor officers can tell the difference. The compounds responsible for the odor of cannabis—terpenes—are present in both legal hemp and illegal marijuana. The only method of distinguishing the two is laboratory analysis. Andrea J. Garland, *Deconstructing Dog Sniffs at Traffic Stops*, 106 Marq. L. Rev. 419, 433–34 (2022). See also Cynthia Sherwood, Alexander Mills & Davis Griffin, *Even Dogs Can't Tell the Difference: The Death of 'Plain Smell,' as Hemp Is Legalized*, 55 TENN. BAR J. 14 (2019). Hemp is now a

commodity that millions of Americans lawfully possess. See J.Y. Park, *Patterns of Cannabidiol Use Among Marijuana Users in the United States*, 50 PREVENTIVE MED. REP. 102985 (2025) (reporting that 10.5 percent of the United States population used hemp-derived cannabidiol (CBD) in the past 30 days).

That single legislative act eliminated the factual premise on which this Court's K9 jurisprudence rests as it relates to cannabis. In *Place* and *Caballes*, this Court treated a dog sniff as constitutionally unique because it discloses only the presence of contraband. *United States* v. *Place*, 462 U.S. 696, 707 (1983); *Illinois* v. *Caballes*, 543 U.S. 405, 409 (2005). But cannabis is no longer categorically contraband. The framework must account for that change, and the decision below ignores it. Instead, the Sixth Circuit preserved a regime in which the Government's initial showing under *Harris* triggers a presumption of probable cause—a presumption that rests entirely on the (now inaccurate) assumption that the substance detected is categorically contraband.

The search of Saine's vehicle was unconstitutional. The contraband-only doctrine of *Place* and *Caballes* no longer exempts the dog sniff from Fourth Amendment scrutiny because the dog cannot distinguish a lawful substance from an illegal one. The expectation-of-privacy framework of *Katz* v. *United States* confirms that the search invades a privacy interest Congress has restored. 389 U.S. 347 (1967). And even if this Court holds otherwise on both points, the K9 alert alone cannot establish probable cause for the subsequent physical search; the presumption at the core of *Harris*'s burden framework—that the K9 detects only contraband—is no longer warranted in the cannabis context.

A. A Dog That Alerts to Legal Hemp Is Not a Contraband-Only Detection Device

Every decision sustaining the warrantless use of a "contraband-only" detection technique turns on a single concept: "contraband." In *Place*, the dog sniff escaped Fourth Amendment scrutiny because it "discloses only the presence or absence of narcotics, a contraband item." 462 U.S. at 707. In *City of Indianapolis* v. *Edmond,* this Court confirmed that the sniff is "not designed to disclose any information other than the presence or absence of narcotics." 531 U.S. 32, 40 (2000). And in *Caballes*, the Court reaffirmed that "governmental conduct that only reveals the possession of contraband compromises no legitimate privacy interest." 543 U.S. at 408.

The same principle has governed nonhuman searches in other contexts. In *United States* v. *Jacobsen*, this Court upheld a chemical field test for cocaine because "Congress has decided . . . to treat the interest in 'privately' possessing cocaine as illegitimate." 466 U.S. 109, 123 (1984). And in *Kyllo* v. *United States*, this Court drew a line between permissible and impermissible surveillance techniques based on whether the technique could detect lawful activity. 533 U.S. 27, 38–39 (2001); see also *Caballes*, 543 U.S. at 409–10 (identifying lawful-activity limitation as the "critical" distinction).

The word "contraband" thus bears all of the constitutional load. It determines whether a technique is a search. It determines whether a privacy interest is legitimate. It determines whether the Government needs a warrant or probable cause before acting. Yet

this Court has never defined the term for Fourth Amendment purposes. See Ben Adams, Note, *What Is Fourth Amendment Contraband?*, 69 STAN. L. REV. 1137 (2017). It has never told lower courts, law enforcement, or the People (whose rights depend on the answer) what "contraband" actually means or, more importantly, what happens when a substance transitions from contraband to non-contraband.

And that's what happened here: in 2018, Congress removed hemp from the Controlled Substances Act, authorized it for interstate commerce, and preempted state laws that interfere with transportation or shipment. See 7 U. S. C. § 1639o(1); Pub. L. No. 115-334, § 10114, 132 Stat. 4490.[4] Tennessee enacted corresponding legislation. See Tenn. Code Ann. § 39-17-402(16)(C). Lawfully produced hemp may be possessed and transported in every state. It is lawful to cultivate and sell under the comprehensive federal framework Congress established. See 7 U. S. C. §§ 1639*o*–1639s.

That transition has precedent. The Eighteenth Amendment inaugurated Prohibition, and alcohol

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[4] In November 2025, Congress amended the definition of hemp, changing the measurement from delta-9 THC concentration to total THC concentration, while retaining the 0.3-percent threshold. Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, Pub. L. No. 119-37, div. B, § 781 (2025) (amending 7 U. S. C. § 1639*o*). The amendment refined the scope of legal hemp, adding exclusions for certain intoxicating cannabinoid products and synthesized compounds while explicitly preserving the legality of industrial hemp. The new definition takes effect November 12, 2026, but makes no difference here; hemp remains legal under federal law, and the distinction between legal hemp and illegal marijuana continues to rest on THC concentration.

suddenly became contraband. U. S. Const., Amdt. XVIII. In *Carroll* v. *United States*, the Court authorized warrantless vehicle searches based on probable cause to believe the vehicle contained "contraband liquor therein which is being illegally transported." 267 U. S. 132, 156 (1925). The Twenty-First Amendment repealed Prohibition fourteen years later, U. S. Const., Amdt. XXI, and this Court recognized the shift. Cf. *Brinegar* v. *United States*, 338 U. S. 160, 167 (1949) (acknowledging that under *Carroll* "the whole nation was legally dry" and that after repeal, "only the importation of such liquors contrary to the law of the state" remained forbidden). After repeal, the authority to search a vehicle for alcohol depended on whether the state into which the liquor was being transported had erected a legal barrier to its importation. No such barrier exists for hemp. Congress has prohibited states from interfering with its transportation or shipment. Pub. L. No. 115-334, § 10114.

When alcohol was categorically contraband, it would have functioned within *Place* because the substance was criminalized in every form. Cocaine and heroin still function that way. See 21 U. S. C. § 812. Cannabis is different. Today, no officer would claim probable cause to search a vehicle for alcohol simply because alcohol was once contraband. Congress has determined that hemp (like alcohol after 1933) is no

longer contraband.[5] So cannabis now exists in both lawful and unlawful forms.[6]

A substance that Congress has authorized Americans to possess, cultivate, and sell is not "contraband" in any ordinary sense of the word.[7] And a detection technique that reveals that substance alongside its illegal counterpart is not a contraband-only technique; it is a technique capable of detecting both legal and illegal activity, which is precisely what *Kyllo* held the Fourth Amendment abhors in the absence of a warrant. See *Kyllo,* 533 U. S. at 38–39. The easy

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[5] This case does not ask this Court to constitutionalize an evolving social norm. The legalization of hemp followed the path the constitutional structure contemplates: legislation, not litigation. Congress assessed the competing interests and changed the law. Saine asks this Court merely to apply its existing framework to a change that Congress has already codified.

[6] States may regulate the production of hemp more stringently than federal law requires, including by restricting permissible THC concentrations in consumer products. See *Bio Gen LLC* v. *Sanders*, 142 F. 4th 591, 602–03 (CA8 2025); 7 U. S. C. § 1639p(a)(3)(A). But no state may interfere with the interstate transportation or shipment of lawfully produced hemp. Pub. L. No. 115-334, § 10114(b). The variation in state law reinforces the need for a coherent doctrine; whatever THC threshold a state adopts, the dog alerts to cannabis regardless, demonstrating the need for a categorical rule.

[7] Neither this Court nor the lower courts have supplied a working definition. Black's Law Dictionary defines "contraband" as goods "that are unlawful to import, export, produce, or possess." Black's Law Dictionary (12th ed. 2024). Merriam-Webster defines it as "goods or merchandise whose importation, exportation, or possession is forbidden." Merriam-Webster's Collegiate Dictionary (11th ed. 2020). Hemp satisfies neither definition. It is lawful to possess, to cultivate, and to sell in every state. See 7 U. S. C. §§ 1639*o*–1639s.

assumption that sustained *Place* and its progeny—that cannabis is always contraband—no longer holds.

Members of this Court have long anticipated this problem. Justice Brennan warned of a future in which the Government could aim detection technology indiscriminately at persons and homes, with no Fourth Amendment check, so long as the technique purported to detect "only" contraband. See *Jacobsen*, 466 U. S. at 138 (Brennan, J., dissenting). Two decades later, Justice Souter questioned whether the *sui generis* classification could bear the weight the majority placed on it, warning the Court not to assume the factual premise of *Place* would hold indefinitely and urging it to "treat the dog sniff as the familiar search it is in fact." See *Caballes*, 543 U. S. at 411–13, 417 (Souter, J., dissenting). Justice Ginsburg joined that dissent and wrote separately to warn that without limits, "every traffic stop could become an occasion to call in the dogs, to the distress and embarrassment of the law-abiding population." *Id.* at 422 (Ginsburg, J., dissenting).

The *Caballes* majority was unpersuaded, but not because of the dissenters' reasoning. Instead, it distinguished their concerns on factual grounds, emphasizing that the respondent had offered no "evidence or findings" that drug-detection dogs alert to anything other than contraband. *Id.* at 409. That premise of infallible accuracy has now changed. The evidence the defendant in *Caballes* could not supply is now evidence the Government does not refute: K9s trained to detect cannabis alert to a substance that Congress has removed from the Controlled Substances Act.

The exemption this Court created in *Place* was not a blanket authorization for the warrantless use of

drug-detection dogs. It was a conditional exemption, hinging on a factual showing that the detection technique reveals only contraband. When the Government fails to make that showing (including here, where no such showing was possible), the exemption falls away. This Court should say so.

Fourth Amendment standards must be "sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made." *Atwater* v. *City of Lago Vista*, 532 U. S. 318, 347 (2001). The object is to provide "readily administrable rules"—not standards "qualified by all sorts of ifs, ands, and buts." *Ibid.* (quoting *New York* v. *Belton*, 453 U. S. 454, 458 (1981)).

Indeed, this Court has expressed a "general preference to provide clear guidance to law enforcement through categorical rules." *Riley* v. *California*, 573 U. S. 373, 398 (2014). The contraband-only doctrine is one such categorical rule. Either the detection technique can reveal only contraband, or it cannot. If it can, the technique escapes Fourth Amendment scrutiny. If it cannot, it is a search. The rule demands a binary answer—and that answer depends on a term this Court has never defined.

The Sixth Circuit's decision below is the antithesis of that rule. The court held that a K9 alert to cannabis still presumptively establishes probable cause but acknowledged that "there may come a day" when hemp is "so pervasive" that it no longer does. App. 8. That is not a categorical rule. It is a sliding scale. Whether the dog sniff remains exempt from the Fourth Amendment depends entirely on whether hemp is "contraband" under *Place*. The Sixth Circuit never asked that question.

So this case presents a question that this Court has never had to confront but should confront now: whether a substance that Congress has removed from the Controlled Substances Act and placed into the stream of lawful commerce remains "contraband" for purposes of the *Place* exemption. Every ordinary meaning of the term answers "no." Every statutory definition confirms it. The answer matters for every jurisdiction, every traffic stop, and every cannabis-related K9 alert in the country.

B. Congressional Legalization of Hemp Restored the Expectation of Privacy that the Fourth Amendment Protects.

If the *Place* exemption no longer holds, the dog sniff logically returns to the framework from which it was carved. This Court has confirmed that understanding. In *Jardines*, the Court described *Place*, *Jacobsen,* and *Caballes* as holdings that "do not violate the 'reasonable expectation of privacy' described in *Katz*." *Florida* v. *Jardines*, 569 U. S. 1, 10 (2013). The contraband-only doctrine is not a freestanding exemption; it is an application of *Katz* that holds only so long as the *Katz* analysis supports it. When Congress criminalized a substance, *Katz*'s analysis yielded no legitimate privacy interest, and the exemption held. When Congress legalized that substance, *Katz*'s analysis restored the privacy interest. See Orin S. Kerr, The Effect of Legislation on Fourth Amendment Protection, 115 MICH. L. REV. 1117, 1125–31 (2017) (identifying an "influence" line of cases in which courts treat legislative judgments as signals of societal values relevant to Fourth Amendment interpretation). The exemption must yield with it.

Place removed the dog sniff from *Katz* for a specific reason, and that reason was legislative. The Court reached the same conclusion the following year in *Jacobsen*, where it held that a chemical field test for cocaine was not a search because "Congress has decided . . . to treat the interest in 'privately' possessing cocaine as illegitimate." 466 U. S. at 123. Congress has now made the opposite decision about hemp. The logic runs in both directions. If congressional criminalization eliminates the expectation of privacy, congressional legalization restores it. The same sovereign whose criminalization of narcotics sustained *Place* has now determined that hemp is lawful. That determination restores the expectation of privacy that criminalization had removed and, with it, the protection of *Katz*.

Caballes itself drew the line this case crosses. The majority sustained the dog sniff because "any interest in possessing contraband cannot be deemed 'legitimate,'" 543 U. S. at 408, and distinguished *Kyllo* on the ground that the thermal imaging could detect lawful activity while the dog could not. *Id*. at 409–10. This Court identified that as the "critical" distinction. *Ibid.* After hemp legalization, the dog sniff falls on *Kyllo*'s side of that line. The dog detects lawful activity—possession of a substance Congress has authorized individuals to possess. Under this Court's reasoning, the sniff now implicates the legitimate privacy interests not at issue in *Caballes*.

Under *Katz*, a Fourth Amendment search occurs when the Government intrudes upon a reasonable expectation of privacy—one the person has actually exhibited and that society is prepared to recognize as reasonable. 389 U. S. at 361 (Harlan, J., concurring).

A person transporting legal hemp in a closed vehicle has exhibited a subjective expectation of privacy. The hemp is inside the vehicle and out of public view. And that expectation is one society is prepared to recognize as reasonable because the people's representatives have said so. Congress has declared hemp legal to possess and transport in interstate commerce. 7 U. S. C. §§ 1639*o*–1639s; Pub. L. No. 115-334, § 10114.

C. A Dog Alert to Cannabis No Longer Establishes Probable Cause for a Physical Search, Even Under *Place*.

Even if this Court concludes that *Place*'s exemption survives hemp legalization, the K9 alert still cannot establish probable cause for the warrantless search of Saine's vehicle.[8] *Harris* itself supplies the standard that condemns that result.

This Court held that "[t]he question—similar to every inquiry into probable cause—is whether all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime." 568 U. S. at 248. In 2013, every substance a drug-detection dog was trained to

[8] This petition does not challenge the automobile exception to the warrant requirement, which permits officers to search a vehicle without a warrant when they have probable cause to do so. See *California* v. *Carney*, 471 U. S. 386, 390–91 (1985). The question here is whether the K9 alert supplied the required probable cause in the first place. A dog that cannot distinguish a lawful commodity from an illegal one does not provide the "fair probability" of contraband that probable cause demands. See *Illinois* v. *Gates*, 462 U. S. 213, 238 (1983).

alert to was categorically contraband. Cannabis was illegal. The inference was sound.

It no longer is. Congress and Tennessee have legalized hemp—a substance derived from the same plant and carrying the same odor as marijuana. A dog trained to alert to both legal and illegal substances can no longer establish through its alert alone that contraband is present. The alert may indicate illegal marijuana, but it may also indicate legal hemp. The officer cannot know—and the dog cannot tell—whether the substance that triggered the alert is one "no individual has any right to possess," *Caballes*, 543 U.S. at 410, or a commodity Congress has placed into the stream of lawful commerce. That uncertainty is the point. Common sense no longer supports the inference *Harris* presumed.

Harris's framework rests on a single equation. A well-trained dog's alert is a reliable indicator of contraband. Every step of the opinion depends on it. This Court held that "evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert." 568 U. S. at 246. Why? Because "only accurate drug-detection dogs enable officers to locate contraband without incurring unnecessary risks or wasting limited time and resources." *Id.* at 247. This Court authorized a presumption of probable cause from training records because it assumed accurate detection of the trained substance is accurate detection of contraband. *Id*. at 246–47.

That equation no longer holds. A dog trained to detect marijuana is trained to detect cannabis. After the congressional change in 2018, cannabis is a category that includes a lawful product. See 7 U. S. C. § 1639*o*.

The dog's training has not degraded. Its certification has not lapsed. Its accuracy may be flawless. But accuracy in detecting cannabis is no longer equivalent to accuracy in detecting contraband—because cannabis is no longer categorically contraband. The dog does exactly what it was trained to do. The problem is that what it was trained to do no longer answers the constitutional question.

Harris anticipated challenges to a dog's competence. This Court invited defendants to "contest the adequacy of a certification or training program, perhaps asserting that its standards are too lax or its methods faulty." *Id*. at 247. The defendant might "examine how the dog (or handler) performed in the assessments made in those settings." *Ibid.* Legalization poses a different challenge entirely. It is not that the dog's training is lax or its methods faulty. It is that the dog's training is directed at a target that includes a lawful substance. *Harris*'s framework has no answer for an objection that goes not to the dog's competence but to the category it was trained to detect.

Warrantless searches are presumptively unreasonable. The exceptions are "jealously and carefully drawn," and the burden is on those seeking the exemption to show the need for it. *Coolidge* v. *New Hampshire*, 403 U. S. 443, 455 (1971) (citations omitted). The Government may not "excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate." *Chimel* v. *California*, 395 U.S. 752, 761 (1969). *Harris* departed from that default. If the Government produces evidence that a drug-detection dog satisfactorily completed "a training program that evaluated his proficiency in detecting drugs," the alert is presumed to

supply probable cause. 568 U. S. at 247. The defendant may then contest that showing. *Ibid.* The burden shifts.[9]

Legalization has changed what the defendant must prove. The challenge is no longer that the dog was poorly trained; it is that the dog's training is no longer tailored to detect an illegal substance. Under *Harris*, the presumption attaches when the Government shows "that a dog performs reliably in detecting drugs." 568 U. S. at 248. But an alert to an odor shared by both legal hemp and illegal marijuana does not demonstrate reliable detection of *drugs*—it demonstrates reliable detection of *cannabis*, a category that now includes a lawful product. See 7 U. S. C. § 1639*o*. And the alert no longer "discloses only the presence or absence of narcotics, a contraband item," *Place*, 462 U.S. at 707—it discloses the presence of a substance that may not be contraband at all. That is not an objection based on the individual circumstances of a particular dog's training; it is a categorical objection based on the inability to train a dog narrowly enough to satisfy *Harris*.

The Sixth Circuit nevertheless required Saine to demonstrate that hemp has become "so pervasive" in Tennessee that the alert no longer indicates a "fair probability" of contraband. App. 8. Consider what that demands. An individual defendant facing criminal charges must establish the relative prevalence of

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[9] As one scholar has observed, Harris's framework "required the defendant to affirmatively disprove the validity of a warrantless search—a position at odds with the burden allocation adopted by a majority of jurisdictions in warrantless search cases." Eve Brensike Primus, *Burdens of Proof in Criminal Procedure*, 75 DUKE L.J. 61, 106–07 (2025).

legal hemp versus illegal marijuana in his jurisdiction. He must produce field-performance data for the specific K9 post-legalization. He must present expert testimony that the alert is no longer reliable. No individual defendant has the resources to do that. And the information necessary to do it is in the Government's exclusive possession.

That burden is compounded by the difficulty of obtaining the records necessary to mount a challenge. While the Second Circuit has recognized that *Harris*'s rebuttal right is meaningless without discovery, see *United States* v. *Foreste*, 780 F. 3d 518, 528–29 (CA2 2015), other courts have denied such requests outright, see *United States* v. *Salgado*, 761 F. 3d 861, 867 (CA8 2014); *United States* v. *Jones*, 2020 U.S. Dist. LEXIS 103239, at 6–8 (D. Me. June 12, 2020).

The consequences of this framework are not hypothetical. Saine pointed to the undisputed fact that the K9 could not distinguish legal hemp from illegal marijuana. App. 3. The panel acknowledged that fact and held against him because the record was "sparse." App. 8. The Government—the party that bears the burden in every other warrantless-search context—offered nothing. Other courts have imposed the same inverted obligation. In *United States* v. *Locke*, 2024 U.S. Dist. LEXIS 57513, at 14 (E.D. Wis. Mar. 28, 2024), the court faulted the defendant for having "presented no evidence and no argument about how common it is that hemp is found in a vehicle in the absence of other controlled substances." The Tenth Circuit said the same. See *United States* v. *Deluca*, 2022 U. S. App. LEXIS 23003, at 13 n. 5 (CA10 Aug. 18, 2022).

In each case, the defendant raised the only challenge reasonably available—that the dog cannot tell

legal from illegal cannabis—and lost because he could not prove what no individual defendant can: the prevalence of hemp in his jurisdiction. In each case, the defendant presented evidence that "call[ed] into question the premise that drug-detection dogs alert only to contraband." *Caballes*, 543 U. S. at 409. What was missing in *Caballes* was established here, to no avail.

The defendant who proves that a drug-detection dog alerts to a lawful substance has done everything the Fourth Amendment can reasonably ask. If that showing is insufficient—if the burden then shifts to proving market prevalence—no individual defendant can establish it. *Harris*'s presumption loses a critical feature: rebuttability. It operates as a per se rule: a K9 alert establishes probable cause regardless of what the dog can actually detect. This Court has held that "for the most part *per se* rules are inappropriate in the Fourth Amendment context." *United States* v. *Drayton*, 536 U. S. 194, 201 (2002). The Sixth Circuit's application of *Harris* has created one.

The per se rule should not survive. When a K9 is trained to alert to a substance that exists in both legal and illegal forms, the *Harris* presumption should not attach. The Government must do what it ordinarily must do: demonstrate probable cause. See *Illinois* v. *Gates*, 462 U. S. 213, 238 (1983). That is not an unworkable standard. Law enforcement agencies nationwide have already retrained or replaced cannabis-detecting dogs—not because a court ordered them to, but because they recognized the tool no longer

works.[10] If agencies can adapt voluntarily, the constitutional standard should not lag behind.

II. Federal and State Courts Have Fractured over Whether a K9 Alert to Cannabis Still Establishes Probable Cause, and this Case Is an Ideal Vehicle.

The contraband-only doctrine was a categorical rule. It worked because the answer was always the same: the dog detects only contraband, the sniff is not a search, and the alert supplies probable cause. Legalization broke the rule. And rather than confront that break, the lower courts have improvised, substituting percentages, sliding scales, and location-based workarounds for the categorical standard this Court established. Each workaround guts the doctrine it purports to apply. And each confirms that the framework, as it stands, cannot answer the question legalization poses.

The Sixth Circuit assumed the answer and never asked the question. The court proceeded directly to probable cause under *Harris* without addressing the threshold inquiry *Place* requires: whether a dog sniff that detects both legal and illegal substances remains exempt from the Fourth Amendment. App. 6–9. Having skipped the threshold, the court applied the wrong

[10] Several states have retired cannabis-detecting K9s following legalization. Ohio has proposed funding the retirement of narcotics dogs trained to detect marijuana. See Megan Henry, *Narcotics K-9s That Smell Marijuana in Ohio Will Need to Retire*, NBC4 (Nov. 15, 2023). Minnesota retired police K9s after legalizing cannabis. See Gordon Severson, *Legalizing Pot in MN Leads to the Early Retirement of Some Police K9s*, KARE 11 (Aug. 1, 2023). Virginia did the same. See Jesse Paul, *Police Departments Grapple with What to Do with K-9s Trained to Smell Marijuana*, COLO. SUN (May 29, 2021).

framework to the question it reached, invoking general probable-cause principles from cases that did not involve a K9. See *United States* v. *Martin*, 289 F. 3d 392 (CA6 2002); *District of Columbia* v. *Wesby*, 583 U. S. 48 (2018). App. 7. But this Court has never applied general probable-cause standards to a dog sniff; it created a separate framework in *Place* precisely because the dog sniff is not an ordinary probabilistic assessment. This Court's precedents demand a showing that the K9 detects contraband, and nothing else. *Place*, 462 U. S. at 707; *Caballes*, 543 U. S. at 409.

The Sixth Circuit also equated K9 alerts with a human officer's perception of marijuana odor, relying on *United States* v. *Santiago*, 139 F. 4th 570 (CA6 2025). App. 7–8. But this Court has rejected that equivalence. In *Jardines*, Justice Kagan described drug-detection dogs as "highly trained tools of law enforcement, geared to respond in distinctive ways to specific scents so as to convey clear and reliable information to their human partners"—not officers exercising independent judgment but a "specialized device for discovering objects not in plain view (or plain smell)." 569 U. S. at 12–13 (Kagan, J., concurring). A human officer who smells marijuana can consider context—the quantity, the location, and the suspect's behavior. A K9 is a device. It provides a binary alert. It cannot signal whether the substance is legal or illegal. That is why this Court carved the dog sniff out of ordinary Fourth Amendment analysis and subjected it to a separate, categorical standard.

The Sixth Circuit acknowledged that "there may come a day" when hemp is "so pervasive" that a K9 alert no longer indicates a "fair probability" of contraband but concluded that "based on the sparse record

before us in this case, that day is not today." App. 8. The court saw the question. It declined to answer it. That is not a resolution in a case where the K9 alert was the sole basis for probable cause.[11]

The Tenth Circuit took a different route to the same dead end. In *United States* v. *Deluca*, the district court declined to resolve whether the K9 was trained to alert to hemp in addition to controlled substances. 2022 U.S. App. LEXIS 23003, *12-13 (CA10 Aug. 18, 2022). The Tenth Circuit affirmed, holding that the factual question did not matter. Even if the dog was trained to alert to hemp, the court reasoned, its alert "would still give rise to a high probability that a controlled substance is in the car as four of the five substances that [the K9] could detect are illegal." *Id.* at 13.

That reasoning rewrites *Place*. This Court did not hold that a dog sniff escapes Fourth Amendment scrutiny when the dog detects *mostly* contraband. It held that the sniff is exempt because it "discloses *only* the presence or absence of narcotics, a contraband item." 462 U. S. at 707 (emphasis added). A dog that alerts to five substances, one of which is legal, fails to qualify in the first instance for the *Place* rule regardless of the

[11] The Government itself drew this distinction. In its brief below, the Government identified the motel location and a BOLO alert as reasons officers called the K9 unit to the scene—not as independent bases for probable cause; the K9 alert was the sole asserted justification for the search. App. 45. The Sixth Circuit nevertheless cited those background factors as supporting probable cause under a "totality of the circumstances" analysis. App. 8–9. But this Court requires lower courts to "rely on the parties to frame the issues for decision." *Greenlaw* v. *United States*, 554 U. S. 237, 243 (2008).

ratio. The Tenth Circuit converted *Place*'s categorical standard into an arithmetic exercise: count the substances, calculate the odds, and declare probable cause if the numbers look favorable. This Court has never endorsed that substitution. And the logic has no limiting principle.

The Seventh Circuit went furthest—erring on both the search question and the probable-cause question. In *United States* v. *Plancarte*, the defendant argued that because K9s cannot distinguish legal cannabis from illegal marijuana, the dog sniff can no longer be said to reveal only the presence of contraband. 105 F. 4th 996, 1000 (CA7 2024). The court acknowledged this Court's holdings but declined to apply them. It failed to engage with a fundamental question: whether Congress, in the cannabis context, has undermined the contraband-only premise those holdings establish.

Instead, the court relied on dicta suggesting that dog sniffs are "generally likely" to reveal only contraband—language drawn not from this Court's holdings but from a characterization in the respondent's brief in *Caballes*, 543 U. S. at 409—and held that the dog's 80 percent field-accuracy rate was sufficient. 105 F. 4th at 1001. A dog can be perfectly reliable at detecting cannabis and still fail the *Place* standard, because cannabis is no longer categorically contraband. An accuracy rate—whether 80 or 50 percent—does not satisfy the categorical standard *Place* demands.

Next, the court held that *Kyllo*'s protections cannot "be divorced from" the home context and that "dog sniffs conducted in public places are generally not" searches. 105 F. 4th at 1000. But *Place*'s holding rested on *what the dog detects*, not *where the sniff*

occurs. *Caballes* confirmed the point, holding that a dog sniff "reveals no information other than the location of a substance that no individual has any right to possess." 543 U. S. at 410. The court's own concluding sentence confirms the misreading: "*Place* and *Caballes* confirm that a sniff performed in this manner is not a Fourth Amendment search because it does not disrupt any reasonable expectation of privacy." 105 F. 4th at 1001. That is not what *Place* and *Caballes* confirm. They confirm that a sniff is not a search because the dog detects *only contraband*. The Seventh Circuit replaced the doctrinal basis of this Court's holdings with one of its own inventions.

The pattern across all three circuits is the same. Each court recognized that the categorical rule no longer works. None said so. Instead, each improvised—sliding scales, statistical ratios, location tests, human-officer analogies—to avoid confronting the question this Court's precedents cannot answer in their current form. The workarounds are irreconcilable with each other and with this Court's holdings. That is not a disagreement that the lower courts can resolve among themselves. It is a categorical rule that has broken, and only the Court that created it can decide what replaces it.

State courts have reached the conclusion the Sixth Circuit refused to draw. The Colorado Supreme Court held in *People* v. *McKnight* that a K9 sniff from a dog trained to detect marijuana constitutes a search and that the alert cannot supply probable cause, because the dog "can no longer be said to detect 'only'

contraband." 446 P. 3d 397, 408 (Colo. 2019).[12] The Supreme Court of Tennessee charted a middle course in *State* v. *Green*, holding that the alert "from a drug-sniffing canine may continue to contribute to a finding of probable cause when examining the totality of the circumstances, notwithstanding the legalization of hemp." 697 S. W. 3d 634, 646 (Tenn. 2024). The Supreme Court of Minnesota reached a similar conclusion, holding that probable cause requires the totality of circumstances to establish "a fair probability that the marijuana is being possessed or used in a criminally illegal manner"—meaning the substance "is not hemp." *State* v. *Torgerson*, 995 N. W. 2d 164, 173 (Minn. 2023). Even courts willing to preserve some role for the K9 alert have recognized that the alert alone is insufficient after legalization.

This case presents the question as cleanly as it can be presented. The K9 alert was the sole basis for the search. App. 45. The dog could not distinguish legal hemp from illegal marijuana. App. 3. And the Government failed to establish what substance the dog detected or that any drug contraband was present at all. App. 3. Under the decision below, an unidentified alert from a dog that cannot distinguish legal from illegal substances is sufficient to establish probable cause for a warrantless vehicle search. A dog alerts to a substance that may be entirely legal, the

[12] *McKnight* rests on the Colorado constitution, not the Fourth Amendment. See *McKnight*, 446 P. 3d at 414 ("This holding is based solely on the protections afforded by our state constitution."). And the case involved marijuana rather than hemp. The doctrinal premise is, however, the same; once the detected substance is no longer illegal to possess, the detection technique no longer passes the contraband-only criterion of *Place*.

Government offers no evidence to refute that point, and the search stands. That's not probable cause; it's a Fourth Amendment blank check.

CONCLUSION

This Court should grant certiorari, and ultimately reverse Saine's conviction.

Andrew S. Pollis
Counsel of Record
MILTON AND CHARLOTTE KRAMER LAW CLINIC
CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW
11075 East Blvd
Cleveland, OH 44106
(216) 368–2766
andrew.pollis@case.edu

Attorney for Petitioner

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