NO. _____

IN THE UNITED STATES SUPREME COURT

ERIC LEBRON BURNEY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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QUESTION PRESENTED FOR REVIEW

By April of 2019 both the state of Tennessee and the federal government excluded low-THC (delta-9 tetrahydrocannabinol) marijuana from the definition of illegal "marijuana" as a controlled substance. That resulted in the proliferation of legal, low-THC marijuana products (often termed "hemp" by statute), which look, smell, and smoke the same as the illegal, high-THC variant of the same plant.

The question presented here is:

Does the smell of legal, low-THC marijuana provide probable cause for law enforcement to conduct an extensive search behind the internal framing and upholstery of an automobile?

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case and include:

Petitioner Eric Lebron Burney, who was the appellant in the court of appeal and the defendant in the district court.

Respondent is the United States of America, which was the appellee in the court of appeals, and the plaintiff in the district court.

RELATED CASE

There are no related cases.

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PETITION FOR A WRIT OF CERTIORARI

Eric Lebron Burney respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

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All documents are contained in the Appendix filed contemporaneously herewith.

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JURISDICTIONAL STATEMENT

The Sixth Circuit entered its opinion and judgment on July 9, 2024. Justice Kavanaugh granted Mr. Burney's application to extend the time to file this certiorari petition until December 6, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment of the United States Constitution provides in full:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

By the time Tennessee Highway Patrol troopers finished with their unconsented, warrantless search of Eric Burney's car on the side of the busy Interstate 81 in Northeast Tennessee, they had pulled up carpet and upholstery, tossed the contents of the trunk, searched internal framing of the vehicle, pulled out the framing around the gear shift, and pried off the cover to the rear floor vents. (Mot. to Suppress, R. 16, PageID #29.) The troopers were searching the vehicle based on the smell of burnt marijuana. (Pet. App'x at 9a.) But they found no marijuana in the vehicle. (Mot. to Suppress, R. 16, PageID #29; Tr. Suppress. Hr'g, R. 23, PageID #23.) There was no drug dog that alerted indicating the presence of illegal drugs; there was no informant who had reported Mr. Bruney as a drug dealer or mule; there was no evidence that Mr. Burney had been involved in any drug transactions or that he was presently intoxicated. (*See generally* Tr. Suppress. Hr'g, R. 23.)

The officers initially stopped Mr. Burney due to his window tint and for following another vehicle too closely. (Pet. App'x at 8a.) After asking Mr. Burney to step out of his vehicle, the troopers searched him and found $1,395 in cash. (*Id.*) While he was outside the vehicle one of the troopers, Trooper Connors, also told him his vehicle smelled like marijuana, to which Mr. Burney responded "Yeah," "I smoked earlier." (*Id.*) Neither trooper inquired as to whether the marijuana he previously smoked was legal. (*See generally* Tr. Suppress. Hr'g, R. 23.) Based only on the smell of burnt marijuana the troopers believed they could search "anywhere inside that vehicle, behind any trim piece, in the trunk, in the tires, in the transmission, in the radiator, anywhere it could possibly be put." (Tr. Suppress. Hr'g, R. 23, PageID #208, 209; *see also id*. at PageID #183.) And, after pulling out the

console surrounding the gear shift the troopers found approximately 300 grams of methamphetamine, which led to the instant federal drug trafficking charge under 21 U.S.C. § 841(a)(1), (b)(1)(A) for possessing methamphetamine with intent to distribute. (Pet. App'x at 9a.)

Mr. Burney moved to suppress the methamphetamine, conceding that under current Sixth Circuit law the smell of burnt marijuana provided the troopers with probable cause to search his vehicle for evidence of recent marijuana *use*. (Mot. to Suppress, R. 16, PageID #38.) He argued that "the critical distinction lies in the officer's subsequent actions in disassembling [Mr. Burney's] entire vehicle to access sealed-off locations Mr. Burney himself could not access without significant physical effort." (*Id.*) He based this argument on this Court's precedent explaining that the nature of the item for which there is probable cause restricts the scope of a search under the automobile exception. (*Id.* at PageID #34 (citing *United States v. Ross*, 456 U.S. 798, 821 (1982) ("The scope of a warrantless search of an automobile . . . is defined by the object of the search and the places in which there is probable cause to believe that it may be found.").)

Pointing to Trooper Connors' testimony that there is no "distinction in smell between" legal and illegal forms of marijuana, Mr. Burney also argued that any probative value the smell of marijuana may previously have had no longer exists, now that legal, low-THC variants are so common. (Objections, R. 25, PageID #256-59; Tr. Suppress. H'rg, R. 23, PageID #206-07.) Thus, Mr. Burney argued that evidence of marijuana *use* (which could be of legal marijuana) did not provide probable cause to believe that evidence of a crime

would be secreted in the internal framing of his vehicle—or any other location that Mr. Burney himself could not readily access. (*Id.* at PageID #36-38.)

The district court denied his motion to suppress. (Order, R. 28, PageID #272-74.) It began by noting that "[s]earching the framing of a vehicle based solely on evidence that the driver smoked marijuana might not be reasonable." (*Id.* at PageID #271-72.) But, it did not decide that question and instead concluded that "the odor of marijuana was not all that justified the search in this case." (*Id.* at PageID #272.) In particular, the district court pointed to "apparent" pry marks on the plastic trim encasing the carpet on the driver's side floorboard, what it called "loose" carpeting, and additional factors which it found "provided the officers with probable cause to believe the vehicle was being used to transport contraband." (*Id.* (emphasis added).)

Mr. Burney then entered a conditional guilty plea, pursuant to Rule 11(a)(2) of the Federal Rules of Criminal Procedure and thereby preserved his right to appeal the denial of his suppression motion. (Tr. Change of Plea, R. 48, PageID #855-56.)

On appeal, he primarily argued that the district court's reliance on any pry marks or allegedly loose carpeting was inappropriate because both "facts" required crediting the testimony of Trooper Connors. (Pet. App'x at 12a.) But, he argued, the district court never made a credibility finding, despite his putting Trooper Connors' credibility in issue, and despite serious red flags. (*Id.*; Opening Brief, 6th Cir. No. 24-5613, R. 19, Pages 30-38; Reply Br., 6th Cir. No. 24-5613, R. 48, Pages 1-8.) He also argued that officers can no longer rely on the smell of illegal marijuana, because its smell is identical to that of legal, low-THC

marijuana. (Pet. App'x at 11a.) And, he argued that regardless, the officers at most had probable cause that he was using marijuana (which could have been of a legal variant), not that he was trafficking it, and so the scope of their vehicle search should have been limited to areas where one would expect to find evidence of marijuana *use*—in places readily accessible to the driver, not in places that require dismantling the vehicle. (*Id.*)

The Sixth Circuit did not reach the question of Trooper Connors' credibility, as it affirmed on the government's theory that the officers "had probable cause to search Burney's vehicle for evidence of a drug crime," which it held included all areas that drugs could be located including areas that could only be accessed by dismantling the vehicle. (*Id.* at 11a, 12a.) It based that conclusion on four factors: an odor of marijuana coming from the vehicle, that Burney rolled down all his windows when the officers approached, that he admitted to smoking marijuana (albeit, without indicating whether it was legal marijuana), and that he had more than $1,000 on his person. (*Id.* at 10a-11a.)

The Sixth Circuit also rejected Burney's argument that the smell of marijuana has limited probative value due to the proliferation of legal variants that smell identical. (*Id.* at 11a.) It provided no explanation, and instead by relied only on a recent Sixth Circuit case holding that the smell of marijuana (regardless of whether the marijuana was legal or not) particularized to a individual person provided law enforcement with probable cause to arrest the individual for possession of illegal marijuana. (*Id.* (citing *United States v. Santiago*, 139 F.4th 570, 575 (6th Cir. 2025).) The Sixth Circuit did not directly address Mr. Burney's distinction between evidence of drug use versus evidence of drug trafficking.

REASONS FOR GRANTING OF THE WRIT

I. The Sixth Circuit got it wrong.

A. The physical characteristics and method of use of legal and illegal marijuana make the two substances indistinguishable absent a lab test.

In Tennessee, and under federal law, it is legal to possess marijuana with a THC (delta-9 tetrahydrocannabinol) concentration of 0.3% or less ("legal marijuana"). 7 U.S.C. § 1639*o*(1); 21 U.S.C. § 802(16)(i); Tenn. Code Ann. § 39-17-402(16)(C); Tenn. Code Ann. § 39-17-403(f)(1); Tenn. Code Ann. § 43-27-101(3). By contrast, marijuana with a THC concentration higher than 0.3% is a controlled substance by statute in both jurisdictions ("illegal marijuana"). 21 U.S.C. § 802(16)(i); 21 U.S.C. § 812(Schedule I(c)(10)); Tenn. Code Ann. § 39-17-415(a)(1). Thus, possession of illegal marijuana is a crime, while possession of legal marijuana is not. *See* 21 U.S.C. § 841(a)(1), (d); Tenn. Code Ann. § 39-17-417(a)(4), (g)(1). This has only been true since April of 2019.

The only difference between legal and illegal marijuana is the concentration of THC—the two substances are derived from the same plant and are otherwise identical. "It's a common misconception that hemp [legal marijuana] and [illegal] marijuana are two different species of plant," but "[t]hey're just two different names for cannabis, a type of flowering plant in the *Cannabaceae* family." Sian Ferguson, *Hemp vs. Marijuana: What's the Difference?*, Healthline (updated Jan. 31, 2025)[1] While "[l]egally, the key difference between the two is tetrahydrocannabinol (THC)," "science doesn't differentiate between

[1] Available at https://www.healthline.com/health/hemp-vs-marijuana (last visited Dec. 6, 2025).

'hemp' and 'marijuana.'" *Id.*

The legalization of low-THC marijuana has led to the proliferation of legal forms of marijuana, which is indistinguishable from illegal marijuana in its look and scent. These include products like "Mood" which is marketed as "Weed for every need" and a legal marijuana cigarette brand called "Wild Hemp" which features a prominent marijuana leaf on its packaging. *See* Mood (2025);[2] Wild Hemp, *CBD Cigarettes For Sale* (2025).[3] Indeed, the state trooper who testified at Mr. Burney's suppression hearing testified that legal and illegal forms of marijuana have no "distinction in smell." (Tr. Suppress. H'rg, R. 23, PageID #206-07).

B. Prior cases holding that the smell of marijuana provides probable cause for a search are no longer valid because the smell no longer indicates the presence of a patently illegal substance.

Probable cause is a fact specific determination, which is limited by the information known to the officer at the time. Probable cause means a fair probability that, based on the totality of the circumstances, evidence of a crime will be found in the place to be searched. *Florida v. Harris*, 568 U.S. 237, 244 (2013)). It is a "practical and common-sensical standard," that involves a "flexible, all-things-considered approach." *Id*. (citations omitted). "[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006)). As shown below, the smell of burnt marijuana (which could be legal, low-THC marijuana) indicates *use* not trafficking, and it is not

[2] Available at https://hellomood.co/ (last visited Dec. 6, 2025).

[3] Available at https://www.wildhemp.com/collections/cbd-cigarettes (last visited Dec. 6, 2025).

reasonable to rely on the scent of a *legal* substance to authorize a search so exacting that law enforcement dismantle a vehicle's internal framing, pull up carpeting, and pull off upholstery.

The closest this Court has ever come to recognizing what has become known as the "plain smell" doctrine was in 1985 in *United States v. Johns*, 469 U.S. 478 (1985). There the Court addressed whether customs officers had probable cause to search pickup trucks and packages within the trucks, when they observed the trucks rendezvous with a small aircraft, when shortly after the aircraft departed individuals covered the contents of the trucks with a blanket, when law enforcement smelled the odor of marijuana when they approached the trucks, and when they saw "packages wrapped in dark green plastic and sealed with tape" which they knew, based on prior experience was "commonly" how "smuggled marihuana" is packaged. *Id*. at 480-81. The Court determined that all of these factors supported a finding of probable cause to search both the pickup trucks and the packages even though the packages were not opened by law enforcement until three days later. *Id*. at 481, 486.

The Court expressly did not decide whether the "plain odor of marihuana emanating from the packages made a warrant unnecessary." *Id*. at 481. But, it explained that the Court had "previously observed that certain containers may not support a reasonable expectation of privacy because their contents can be inferred from their outward appearance, and based on this rationale" other courts, such as the Fourth Circuit, "held that 'plain odor' may justify a warrantless search of a container." *Id*. at 486 (citing *Arkansas v. Sanders,* 442 U.S. 753, 764–765, n. 13 (1979); *United States v. Haley,* 669 F.2d 201, 203–204, and n. 3 (4th Cir. 1982)).

Indeed, the reliance on the "plain odor" of marijuana as a basis for probable cause for a warrantless search is an extension of the "plain view" doctrine, permissible because of the unique scent and its patent illegality. *See, e.g.*, *United States v. Sifuentes*, 504 F.2d 845, 848 (4th Cir. 1974) (upholding a warrantless search of boxes containing marijuana because the "strong odor of marijuana" emanating from the boxes had the effect of placing the marijuana "in plain view, that is, obvious to the senses"); *State v. Crosby*, No. W2013-02610-CCA-R3CD, 2014 WL 4415924, at *8 (Tenn. Crim. App. Sept. 9, 2014) (rejecting a challenge to a search based on the smell of marijuana because "marijuana is an illegal substance that emits a distinctive odor").

But, this "plain view" justification is no longer viable. The plain view doctrine allows law enforcement to seize an item whose incriminating nature is evident by the "[i]ncontrovertible testimony of the senses," such that it is "immediately apparent to the police that they have evidence before them." *Coolidge v. New Hampshire*, 403 U.S. 443, 466, 468 (1971). Previously, when all forms of marijuana were illegal regardless of THC content, its distinct and unusual odor made it immediately apparent that an illegal substance was close by. *Sifuentes*, 504 F.2d at 848.

That logic no longer holds—the smell of marijuana no longer incontrovertibly indicates an illegal substance. Legal and illegal versions of marijuana smell identical. (Tr. Suppress. H'rg, R. 23, PageID #196, 206-07 (Trooper Connors testifies that there is no "distinction in smell" between legal and illegal versions of marijuana). The smell of marijuana no longer reliably indicates illegal activity, so can no longer establish probable

cause. And, as detailed below, it certainly is unreasonable to rely on that odor as justification for dismantling the internal framing of a vehicle.

C. Evidence that someone is smoking marijuana (which could be legal, low-TCH marijuana) does not establish probable cause to search the internal framing of a vehicle because evidence of marijuana *use* is unlikely to be found in difficult to access, sealed off portions of a vehicle.

Law enforcement officers must not only have probable cause to believe that something illegal is present in a vehicle to search it, but they are only permitted to look for that item *where the item might be found*. *United States v. Ross*, 456 U.S. 798, 821 (1982). When probable cause is based on evidence of recent drug use in a vehicle, evidence of that drug use will not be secreted in the difficult-to-access interior framing of a vehicle. Evidence of drug *use* will not be sewn into upholstery or hidden in door panels that can only be accessed by first opening the door, pulling off weather stripping, yanking off a piece of plastic floorboard, and pulling up carpeting. It will be readily accessible so the individuals in the vehicle can *use* it. This is particularly true when the evidence at issue is the smell of burnt marijuana, which indicates recent use, and when the "drug" being used could just as easily be purely legal—making any likelihood of illegal trafficking even lower. Surely purely legal conduct cannot provide probable cause to wholly dismantle a vehicle's internal framing and upholstery.

Taken to its logical end, that would mean law enforcement could search the inside paneling of a vehicle in search of bootlegged whiskey based only on the smell of alcohol on one's breath, as legal and bootlegged whisky smell identical. Or, when a driver is smoking a cigarette during a traffic stop for speeding, law enforcement could tear apart the upholstery

looking for smuggled cigarettes, seeing as how legal cigarettes smell the same as bootlegged ones. Both examples are wholly unreasonable. In the absence of *additional evidence* of illegal *trafficking* of these substances (whose odor associated with using the substance does not immediately indicate the substance is illegal), tearing apart the internal framing is dramatically out of bounds. These circumstances reflect clear Fourth Amendment violations, but the use of marijuana is now functionally no different, and use of legal marijuana is readily prevalent in the general population.

The comparison to smuggled cigarettes needs a few more moments to fully conceptualize. First, an individual transporting smuggled cigarettes is not as obscure a problem as it might seem at first blush. Smuggling cigarettes is a widespread, significant problem and "a lucrative criminal enterprise." Adam Hoffer, *Cigarette Taxes and Cigarette Smuggling by State*, *2021*, Tax Foundation (Dec. 5, 2023).[4] Indeed, 54.4% of cigarettes consumed in New York state were from smuggled sources, with similarly high rates in other prominent states including California (44%), New Mexico (38.3%) and Washington (37.3%). *Id.* "The annual forgone revenue from untaxed cigarette packs in states that experience net inbound smuggling exceeded $5.2 billion in 2021." *Id.* But no one would seriously suggest that by merely smelling a freshly burnt cigarette in a car law enforcement could reasonably rip out the vehicle's internal framing in search of smuggled cigarettes.

[4] Available at https://taxfoundation.org/data/all/state/cigarette-taxes-cigarette-smuggling-2023/ (last visited Dec. 6, 2025).

At the same time, recent research shows that more Americans smoke legal variants of marijuana than those who smoke cigarettes—which means that the rule advocated by the government will have a larger impact on law-abiding Americans than if law enforcement were permitted to dismantle one's vehicle based only on cigarette use. In a recent article by Forbes it explained that 16% of Americans report using CBD flower, which is a version of the marijuana plant that does not contain illegally high levels of THC and which is consumed by smoking. Alena Hall, *CBD Statistics, Data and Use*, Forbes (updated April 29, 2024)[5]; *see also* U.S. Centers for Disease Control and Prevention, *Cannabis and Public Health: About Cannabis* (Feb. 15, 2024).[6] By contrast, only 11.6% of Americans report smoking cigarettes. U.S. Centers for Disease Control and Prevention, *Burden of Cigarette Use in the U.S: Current Cigarette Smoking Among U.S. Adults Aged 18 Years and Older* (last reviewed Oct. 8, 2024).[7] Given the widespread use of legal version of marijuana, evidence of marijuana use does not sufficiently justify dismantling the interior framing of a vehicle or pulling off upholstery.

This Court has never approved of such an exacting vehicle search based on evidence of only *use* of an illegal substance, let alone use of a substance that could just as readily (if not more likely) be legal. *Carroll v. United States*, 267 U.S. 132 (1925), proves the point. There, the search of a vehicle, including behind the seat upholstery, was upheld in 1925

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[5] Available at https://www.forbes.com/health/cbd/cbd-statistics/ (last visited Dec. 6, 2025).

[6] Available at https://www.cdc.gov/cannabis/about/index.html (last visited Dec. 6, 2025).

[7] Available at https://www.cdc.gov/tobacco/campaign/tips/resources/data/cigarette-smoking-in-united-states.html (last visited Dec. 6, 2025).

during the height of prohibition. *Id.* at 132-35, 160-61. But the search had nothing to do with whether law enforcement smelled alcohol or otherwise believed the passengers in the vehicle were using alcohol.

No, in *Carroll*, law enforcement searched behind the vehicle's seat upholstery only after (1) the driver and passenger had previously attempted to sell bootlegged liquor to law enforcement agents in Grand Rapids, Michigan using an Oldsmobile roadster "the number of which [one agent] then identified," (2) on a separate occasion, agents saw the same two men in the same exact vehicle drive from Grand Rapids towards Detroit (which was known as "one of the most active centers for introducing illegally into this country spirituous liquors for distribution into the interior,") and the agents followed them for miles, but eventually lost the tail, and (3) two months later the same agents saw the same two men, in the same vehicle, driving from Detroit in the direction of Grand Rapids. *Id.* at 135, 160.

Given the prior attempted sale, the use of the same vehicle, and the suspicious movement between a bootlegging capital and the city where the men "plied their [bootlegging] trade," the agents had probable cause to search the vehicle for the suspected bootlegged alcohol. *Id.* at 160-161. In short, there was ample evidence the drivers were *trafficking* an illegal substance. Importantly, as noted in Justice McReynolds' dissent, prior to tearing open the seat upholstery, the agents had additional and particularized evidence that bootlegged alcohol was secreted behind the seat back, namely that it "was awfully hard when I struck it with my fist. It was harder than upholstery ordinarily is in those backs; a great deal harder. It was practically solid." *Id.* at 174 (McReynolds, J., dissenting, joined by J. Sutherland). And, unsurprisingly, bootlegged alcohol is exactly what the agents found.

Another landmark case from this Court addressing the permissible scope of vehicle searches, *Ross*, similarly comes nowhere close to authorizing the dismantling of one's vehicle based on evidence of substance use—and it especially doesn't allow for such a search when the use could have been of a purely legal substance. 456 U.S. 798. *Ross* authorized the search of an individual's "entire vehicle" for contraband but did not address whether "entire vehicle" meant areas that required dismantling the vehicle. *Id*. at 817. In *Ross* the question was whether law enforcement needed to pause an otherwise valid vehicle search in order to obtain a warrant to look inside closed packages, namely a paper bag and a piece of luggage, that were in the vehicle. *Id*. at 800-02. The Court concluded that under the specific circumstances before it, "police officers had probable cause to search respondent's entire vehicle," for contraband, including the paper bag and luggage contained therein, but that search did not in fact extend to any internal framing of the vehicle. *Id.* at 817. Moreover, there the officer's probable cause was based on a tip from a previously reliable informant who just minutes before the vehicle was stopped by law enforcement personally witnessed the defendant selling narcotics out of the vehicle. *Id.* at 800, 817 n.22. That is clearly evidence of drug trafficking, not use.

None of these facts, nor anything similar, are present here. No one had been tracking Mr. Burney or had any reason to suspect him of trafficking illicit substances. There were no attempted sales to an undercover informant, there was no suspicious travel by Mr. Burney, nor was there any evidence of drug trafficking in the vehicle itself, such as multiple baggies or scales. Moreover, no marijuana was found in Mr. Burney's vehicle.

In Mr. Burney's case the Sixth Circuit relied on four factors to support probable cause to dismantle his vehicle: (1) an odor of burnt marijuana coming from the vehicle, (2) that Burney rolled down all his windows when the officers approached, (3) that he admitted to smoking marijuana (albeit, without indicating whether it was legal marijuana), and (4) that he had more than $1,000 on his person. (Pet. App'x at 10a-11a.) But, only one of these factors could possibly indicate drug trafficking as opposed to use—the possession of more than $1,000 on his person. But even that is spurious.

The possession of that amount of cash is not sufficient to turn evidence of marijuana use into evidence of drug trafficking. Trooper Connors did not testify that the cash provided him with any suspicion. To the contrary, he testified that he searched the interior framing of the vehicle based on the smell of burnt marijuana *alone*. (Tr. Suppress. Hr'g, R. 23, PageID #208, 209; *see also id*. at PageID #183.) Nor did the district court or the magistrate judge place any significance on it at all, as neither even mentioned cash in their respective decisions. That is wise, given that today many people—including high ranking members of the President's cabinet with easy access to banks, ATMs, and credit cards—carry large amounts of cash with them. Jose Campbell and Kit Maher, *Homeland Security Secretary Kristi Noem's bag, including $3,000 in cash, is stolen from DC restaurant*, CNN Politics (updated April 21, 2025).[8] With no other evidence of drug trafficking, such as scales, or baggies, these four factors do not provide probable cause to dismantle a vehicle's interior.

[8] Available at https://www.cnn.com/2025/04/21/politics/homeland-security-kristi-noem-purse-stolen/index.html (last visited Dec. 6, 2025).

In short, in both *Carroll* and *Ross* law enforcement had probable cause indicating drug trafficking, not just use. And that evidence went far beyond possession of some cash and smoking what could be legal marijuana. Neither case stands for the proposition that every time law enforcement has probable cause of drug use, they can dismantle a vehicle. Nor does either mean that law enforcement can tear apart a vehicle anytime they are searching for something small enough to be secreted in internal framing or hidden behind upholstery, no matter the effort required to do so. If that were true, anyone and everyone's vehicle could be destroyed by any zealous police officer for nearly any suspected crime.

Illegally possessed food stamps could be secreted in the framing of a vehicle, so could old, unpaid parking tickets, or any everyday item that was taken in a theft. But the illegality of these items is not readily ascertainable on their face. Under the Sixth Circuit's theory, when a law enforcement officer sees (or smells) any item that *could* be either illegal or innocuous that officer can tear apart the entire vehicle. That result is intolerable and unreasonable. Something more than mere use or possession of an item that could be legal is required before dismantling an entire vehicle—there must be something to indicate that evidence of the crime *for which the officer has probable cause* is likely to be found within the interior walls of the vehicle.

II. This is a widespread and consistently recurring question of exceptional importance.

Millions of Americans smoke legal marijuana, and the Sixth Circuit's approach places them at risk not only of having their vehicle searched, but of being subjected to an extensive and time-consuming dismantling of the internal framing, carpeting, and upholstery

of their vehicle. That level of intrusion into the private lives of Americans engaged in purely legal conduct is unreasonable. "[C]ountless vehicles are stopped on highways and public streets every day," such that there is "no dispute among judges about the importance of striving for clarification" in cases involving the warrantless search of a vehicle. *Ross*, 465 U.S. at 803-04. Even when law enforcement has probable cause to believe that contraband may be found in a vehicle, "In every case a conflict is presented between the individual's constitutionally protected interest in privacy and the public interest in effective law enforcement," such that the permissible scope of the search matters as much to the privacy interests of individuals as whether there is probable cause to search in the first place. *Id*. at 804.

The logic of the Sixth Circuit extends far beyond just legal marijuana smokers—it applies equally to any individual's use or possession of any item that could be either legal or illegal. Including liquor or cigarettes (could be bootlegged or legal, and cannot determine the difference from scent alone), food stamps (it's illegal to transfer food stamps to individuals other than who they were issued for, but that illegality is not discernable from the face of the food stamps alone), or parking tickets (which could be paid or past-due, but which is not discernable on their face). Since any of these items could be secreted in the internal framing of a vehicle, or sewn into upholstery, under the Sixth Circuit's approach, possession or use of any would justify dismantling one's vehicle.

That result is far beyond any bounds of the Fourth Amendment previously recognized by this Court. This Court's guidance is urgently needed to preserve the Fourth Amendment rights of ordinary Americans engaged in everyday, purely legal conduct.

CONCLUSION

For the forgoing reasons, Eric Burney respectfully requests that this Court grant his petition for a writ of certiorari.

Respectfully submitted,

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