No. 25-7116

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

DAVID G. HENRY,

Petitioner,

v.

RON KOMAROVSKY, *et al.*,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

David G. Henry

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QUESTIONS PRESENTED

1. Whether the Fourth Amendment permits probable cause for a compelled blood draw and custodial arrest for suspected cannabis impairment to rest on the aggregation of a traffic accident, minor field sobriety deviations, lawful possession of a sealed cannabis product, and ambiguous or self-corrected conversational responses—where officers observed no odor of cannabis, no bloodshot eyes, no slurred speech, no physical instability, a 0.00 breath test, and zero clues on the HGN eye-tracking test—in a State where adult-use cannabis has been legal since 2012.

2. Whether, under *Franks v. Delaware*, 438 U.S. 154 (1978), when a warrant affidavit is shown to contain material omissions, a reviewing court may sustain the warrant by independently reassessing probable cause after inserting the omitted facts, or whether the court must assess whether the issuing magistrate would have found probable cause on a complete and accurate affidavit.

LIST OF PARTIES

All parties to the proceeding in the court whose judgment is the subject of this petition are as follows:

Petitioner: David G. Henry

Respondents: Ron Komarovsky, individually and in his official capacity as a Tacoma Police Officer; Brynn Cellan, individually and in her official capacity as a Tacoma Police Officer; City of Tacoma, a municipal corporation.

No party to this proceeding is a nongovernmental corporation, and no publicly held company owns 10% or more of the stock of any party.

RELATED CASES

None.

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The Ninth Circuit's unpublished memorandum disposition (Appendix A) is available at No. 24-3014 (9th Cir. Jan. 16, 2026). Rehearing en banc was denied on February 13, 2026. Appendix C. The district court's order granting summary judgment (Appendix B) is available at No. 3:22-cv-05523-TMC (W.D. Wash. Apr. 24, 2024).

JURISDICTION

The Ninth Circuit entered judgment on January 16, 2026, and denied rehearing en banc on February 13, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely filed within 90 days of the denial of rehearing.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> *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

A. The Traffic Collision and Initial Contact

On January 6, 2021, Petitioner David Henry was involved in a two-vehicle collision at the intersection of S. 56th Street and S. Oakes Street in Tacoma, Washington. Appendix E at 3. There were no injuries to any party. Tacoma Police Officer Ron Komarovsky responded and arrived at approximately 2:12 p.m. Officer Brynn Cellan arrived shortly after to assist.

A witness, Shane Woods, told Officer Komarovsky that Petitioner had run a red light from the left turn lane and struck the other vehicle. Appendix B at 3. Civilian video footage from a neighbor's security camera confirmed the red-light violation but contradicted portions of Woods's account—Woods had described Petitioner driving around another vehicle stopped at the light, which the video showed was inaccurate. Despite learning of this discrepancy, Officer Komarovsky relied on Woods's account in his report and warrant affidavit without disclosing that a key detail had been contradicted by video. Petitioner does not dispute that he entered the intersection against a red signal.

B. The Questioning and the "Inconsistent" Statements

During the roadside encounter, Officer Komarovsky questioned Petitioner about where he was coming from and whether he had been drinking or using cannabis. The body-worn camera captured the exchange, which the district court transcribed. Appendix B at 3. Petitioner stated he had come from downtown near the casinos, where he had been buying cannabis. He denied drinking and denied smoking. When asked when he last smoked, Petitioner initially said "yesterday," struggled to answer when asked how much, and when pressed further said "a year ago." He told the officer the cannabis was still in the package. Appendix B at 3.

Both courts below characterized these responses as "inconsistent answers" supporting probable cause. Appendix A at 4; Appendix B at 12. But even accepting the responses as inconsistent, they do not meaningfully support an inference of impairment. Moreover, neither answer contradicted Petitioner's consistent denial that he had used cannabis before driving — the only question relevant to probable cause for impaired driving. As to location, Petitioner gave increasingly specific answers (the casino area, then buying weed)—progressive clarifications in response to follow-up questions, not contradictions. As to cannabis use, the physical evidence confirmed that Petitioner was not a recent user: the cartridge was sealed and unopened, the HGN showed zero clues, the BAC was 0.00, and the blood test ultimately showed no active THC to report. Whatever imprecision existed in Petitioner's roadside answers, a reasonable officer confronted with uniformly negative objective evidence of impairment could not treat those answers as the linchpin of probable cause for a compelled blood draw.

C. The Field Sobriety Tests

Petitioner voluntarily submitted to three Standardized Field Sobriety Tests:

Horizontal Gaze Nystagmus (HGN): Officer Komarovsky "did not observe clues on the HGN." Appendix B at 4. The body-worn camera showed Petitioner's eyes closely following the stimulus. *Id.* NHTSA's own training materials describe HGN as the most validated of the three standardized tests for detecting alcohol impairment. *See* NHTSA, DWI Detection and Standardized Field Sobriety Testing, Session 8 (2018). A result showing zero clues is a standardized indication that common signs of intoxication are not present.

Walk and Turn: Petitioner took 10 steps instead of 9 and showed what the district court characterized as "mild difficulty balancing." Appendix B at 4. Some steps were off the line.

One Leg Stand: Petitioner showed "moderate difficulty balancing," including hopping and swaying. Appendix B at 4. He initially lifted the wrong foot before correcting.

Officer Komarovsky had only basic SFST training from the police academy. His sworn warrant declaration confirms he lacked Drug Recognition Expert (DRE) certification, Advanced Roadside Impaired Driving Enforcement training, and Collision Reconstruction training—all boxes on the standard form were left unchecked. Appendix E at 2. Yet he purported to diagnose cannabis impairment based solely on these FSTs—a determination that even certified DREs acknowledge requires a specialized 12-step protocol not performed here.

D. The 0.00 BAC and the Unfalsifiable Framework

Petitioner voluntarily submitted to a Preliminary Breath Test. The result was 0.00—confirming the complete absence of alcohol. Appendix B at 4. Rather than treating this as exculpatory evidence, Officer Komarovsky wrote that the result "was observed to be inconsistent with the signs of impairment I was observing." Appendix D at 3.

This framing reveals a critical logical problem. The officer was observing "signs of impairment" he expected to correlate with intoxication. When the breath test eliminated alcohol, a reasonable officer should have reconsidered whether those "signs" actually reflected impairment—particularly since the HGN was also completely clean. Instead, the officer used the negative result as further evidence of drug impairment, creating a framework in which no test result could exculpate Petitioner: a positive BAC would confirm alcohol impairment, while a 0.00 BAC was "inconsistent" and therefore confirmed drug impairment. The district court endorsed this reasoning, holding that the 0.00 BAC "indicates a person's blood alcohol content, and not THC blood levels," Appendix B at 12—treating the complete absence of one intoxicant as irrelevant rather than as evidence weighing against impairment generally.

E. The Cannabis Cartridge

Cannabis has been legal for recreational purchase and possession in Washington State since Initiative 502 took effect in 2012. *See* Wash. Rev. Code § 69.50.4013. Possessing a sealed, retail-packaged cannabis product purchased from a licensed store is conduct that approximately 170 million Americans can lawfully engage in across 24 states and the District of Columbia. *See* Nat'l Conference of State Legislatures, State Medical Cannabis Laws (2025). Yet both courts below treated this lawful possession as a factor supporting probable cause for impaired driving. Appendix A at 4; Appendix B at 13.

F. Arrest, Warrant, and Detention

At approximately 2:38 p.m., Officer Komarovsky arrested Petitioner for driving under the influence. Appendix B at 4. Petitioner was transported to Tacoma Police Operations, where Officer Komarovsky prepared a warrant application for a blood draw.

The sworn Declaration in Support of the Search Warrant contained the following material omissions and misleading characterizations:

• It described the collision as Petitioner running a red light and crashing into another vehicle. Appendix E at 3. But the affidavit omitted the critical fact — documented in Officer Komarovsky's own supplemental report — that Petitioner's vehicle was 'initially stopped in the left turn lane' before proceeding through the intersection. Appendix D at 3. The bare statement that Petitioner ran a red light suggests reckless, high-speed driving through an intersection; the omitted detail that Petitioner was stopped and then proceeded on a mistaken signal tells a materially different story.

• It described the THC cartridge as "a disposable cartridge containing THC fluid," without disclosing that the cartridge was sealed and unopened in its original retail packaging. Appendix E at 4.

• It did not fairly present that Officer Komarovsky observed zero clues on the HGN— a standardized test result indicating no signs of alcohol-related impairment. *See* Appendix E at 3.

• It characterized the 0.00 PBT result not as evidence of sobriety but as "inconsistent with the signs of impairment I was observing"—an interpretive gloss that deprived the issuing judge of the ability to independently weigh the significance of the negative result. Appendix E at 3.

• It stated that Petitioner 'admitted to visiting a marijuana store' and 'said yesterday before changing it to a year ago.' Appendix E at 3. But the affidavit omitted that Petitioner repeatedly denied using cannabis, denied drinking, and volunteered that the cartridge was still in its packaging. *See* Appendix B at 3. The officer stripped away every denial and presented only the fragments that, taken out of context, suggested consciousness of guilt — converting what was in substance an exculpatory exchange into an inculpatory one.

• It relied on the account of witness Shane Woods without disclosing that civilian video footage had contradicted a key detail of Woods's account. Appendix E at 3. Woods claimed Petitioner drove around another vehicle stopped at the light, which the video showed was inaccurate. Appendix B at 3. The affidavit presented Woods's testimony as reliable without alerting the magistrate that it had been partially discredited by independent evidence.

Pierce County Superior Court Judge Alicia Burton authorized the warrant by email at approximately 3:36 p.m. Petitioner was transported to Allenmore Hospital, where two vials of blood were drawn at approximately 4:27 p.m. Appendix D at 5. Petitioner was then transported to Pierce County Jail and held overnight.

The blood test results showed insufficient levels of active THC to report. Appendix A at 3. The charges were dismissed with prejudice on December 17, 2021. *Id.*

G. Procedural History

Petitioner filed this action under 42 U.S.C. § 1983 in the Western District of Washington. Henry v. Komarovsky, No. 3:22-cv-05523-TMC. He alleged false arrest, false imprisonment, malicious prosecution, excessive force, and illegal search and seizure against Officers Komarovsky and Cellan and the City of Tacoma. Appendix B at 2.

The district court (Cartwright, J.) granted summary judgment for all defendants on April 24, 2024. Appendix B. The court held that Officer Komarovsky had probable cause based on the "totality of circumstances" and alternatively that the officer was entitled to qualified immunity because Petitioner could not identify clearly established law that officers lack probable cause under the circumstances here. Appendix B at 14. On the *Franks* claim, the court found the omissions "not material" because "probable cause to issue the warrant remains after amendment." Appendix B at 17.

The Ninth Circuit (Paez, Bennett, and Sung, JJ.) affirmed in an unpublished memorandum disposition on January 16, 2026. Appendix A. The panel held that the "undisputed evidence" established probable cause based on five factors: (1) witness testimony; (2) inconsistent answers; (3) poor FST performance; (4) a 0.00 BAC; and (5) an unopened THC cartridge. Appendix A at 4. It found the warrant omissions "not material." *Id.* Rehearing en banc was denied on February 13, 2026. Appendix C.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW DILUTES PROBABLE CAUSE BY AGGREGATING WEAK INDICATORS WHILE DISREGARDING EXCULPATORY EVIDENCE

Probable cause requires "a fair probability" that evidence of a crime will be found. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). That threshold is not toothless—especially where the State seeks a compelled blood draw, a paradigmatic bodily intrusion governed by the Warrant Clause's structural protections.

The Ninth Circuit's five-factor list is itself the constitutional issue. The panel treated the 0.00 BAC as one of the facts that "established probable cause." Appendix A at 4. It treated an unopened cannabis cartridge as part of the same calculus. *Id.* It credited the officer's compressed account of Petitioner's roadside statements as probative "inconsistency" — without acknowledging that Petitioner repeatedly denied cannabis use, that the officer framed a lawful visit to a licensed store as an "admission," or that the physical evidence corroborated the denials. Appendix A at 4; Appendix B at 3. And it accepted these factors without asking whether they retained any force once the objective tests — the 0.00 BAC and the zero-clue HGN — had come back clean. What remained were minor FST deviations and a legal cannabis product — neither of which is a validated indicator of cannabis impairment.

If these facts can satisfy probable cause in a legalization State—absent odor, bloodshot eyes, slurred speech, or other traditional markers—then ordinary lawful conduct plus a traffic event can become a sufficient predicate for custodial arrest and a compelled blood draw. That rule dilutes the Fourth Amendment's probable-cause requirement at the very moment it authorizes the most intrusive search.

II. THE COURTS OF APPEALS APPLY CONFLICTING APPROACHES TO EXCULPATORY EVIDENCE AND AGGREGATED WEAK INDICATORS

The decision below reflects a broader and outcome-determinative divergence among the circuits over whether exculpatory evidence must be meaningfully weighed when officers rely on aggregated weak indicators of impairment.

A. The Eighth Circuit

In *Galanakis v. City of Newton*, No. 24-1275 (8th Cir. Apr. 17, 2025), the Eighth Circuit confronted a case with strikingly similar facts—and reached the opposite result.

On August 28, 2022, Officers Winters and Wing stopped nineteen-year-old Tayvin Galanakis for driving with his high beams on. There was no erratic driving. *Id.* at 2. During the stop, officers noted Galanakis was chewing gum and had air fresheners on his rearview mirror. The officer asked how much Galanakis had had to drink; he answered "none" and twice asked to take a breathalyzer. *Id.* at 3. Instead of administering the breath test, the officer required Galanakis to perform field sobriety tests for more than ten minutes. On the walk-and-turn, Galanakis took too many steps and failed to follow certain instructions regarding counting and turning; on the one-leg stand, he did not count aloud as instructed. "Otherwise, he performed the tests without issue." *Id.*

When the officer finally administered the breathalyzer, it returned 0.00. The officer immediately read Galanakis his Miranda rights and asked when he had last smoked marijuana. Defendants conceded the breathalyzer result "eliminated alcohol as the source of intoxication"—yet rather than treating the 0.00 as exculpatory, the officer redirected his suspicion to marijuana, just as Officer Komarovsky did here. A drug evaluation at the station "concluded that Galanakis was not under the influence of any illicit substances, and he was released." *Id.* at 4.

The Eighth Circuit denied qualified immunity, holding that "no officer could reasonably conclude that there was a substantial chance that Galanakis was under the influence of marijuana." *Id.* at 8. Its analysis proceeded in two steps that stand in direct contrast to the approach below.

First, the court required that exculpatory evidence be weighed. *Galanakis* "evinced almost no indicia of intoxication: no erratic driving; no odor of marijuana; no watery or bloodshot eyes; no staggering or physical instability; no refusal to take sobriety tests." *Id.* His body-camera footage "suggest[ed] the opposite of intoxication": the district court found he "was moving confidently and directing subtle and not-so-subtle verbal jabs at [the officer] in a manner that would have been difficult for an impaired person." *Id.* The court held that it "may not disregard exculpatory evidence when considering the totality of the circumstances to determine if arguable probable cause existed." *Id.* at 7 (quoting *Nieters v. Holtan*, 83 F.4th 1099, 1107 (8th Cir. 2023)).

Second, the court rejected the officers' attempt to isolate and aggregate weak indicators. Courts must look at "the whole picture" and avoid a "divide-and-conquer approach," instead weighing "all of the surrounding circumstances." *Id.* at 7–8 (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 60–62 (2018)). The court then examined each indicator and found each insufficient:

- The traffic violation, air fresheners, and brief difficulty finding documentation were "minimally suggestive of impairment." *Id.* at 8–9.

- Minor FST deviations provided only "weak support for the inference that Galanakis was intoxicated," especially because "marijuana diminishes a person's temporal and spatial judgment, but the Standard Field Sobriety Test does not measure those effects." *Id.* at 9 (quoting *State v. Wenzel*, 987 N.W.2d 473, 483 (Iowa Ct. App. 2022)).

• Purportedly "inconsistent statements" were not actually inconsistent: the district court found the suspect's answers were "detailed and coherent," and the Eighth Circuit agreed. *Id.* at 9–10.

The court's conclusion: "By the time Galanakis was arrested, no objectively reasonable officer could have concluded that there was a substantial chance Galanakis had driven while under the influence of marijuana." *Id.* at 10–11. The officers' cited facts reflected "at most a 'divide-and-conquer approach'—a subset of [the defendant's] actions that would not suggest a substantial chance of marijuana intoxication to any reasonable officer when observed in the context of the stop as a whole." *Id.* at 10.

The parallels are direct. In both cases: (1) officers encountered a driver after a minor traffic event; (2) the driver blew 0.00 BAC; (3) the officer immediately pivoted to marijuana; (4) FST deviations were minor (too many steps, balance issues) while the HGN showed no clues; (5) the driver's statements were characterized as "inconsistent" but were better understood as coherent and self-correcting; (6) there was no odor, no bloodshot eyes, no slurred speech, and no staggering; and (7) post-arrest testing confirmed no impairment. Yet the Eighth Circuit held these facts could not support even arguable probable cause—a standard lower than actual probable cause—while the Ninth Circuit held that materially indistinguishable facts established actual probable cause.

B. The Fifth, Sixth, and Seventh Circuits

Galanakis is not an outlier. It exemplifies a broader approach already expressed by multiple circuits: exculpatory evidence must be counted, not sidelined.

The Sixth Circuit has held that probable cause must be "founded on both inculpatory and exculpatory evidence known to the officers at the time of arrest." *Logsdon v. Hains*, 492 F.3d 334,

341 (6th Cir. 2007). Officers "cannot turn [a] blind eye to potentially exculpatory evidence." *Gardenhire v. Schubert*, 205 F.3d 303, 318 (6th Cir. 2000).

The Seventh Circuit has held that a "police officer may not close [his] eyes to facts that would help clarify the circumstances of an arrest." *BeVier v. Hucal*, 806 F.2d 123, 128 (7th Cir. 1986). Officers must pursue "reasonable avenues of investigation" and cannot ignore readily available information that would undermine probable cause. See also *Woods v. City of Chicago*, 234 F.3d 979, 997 (7th Cir. 2001) ("An officer cannot close her eyes to potentially exculpatory evidence.").

The Fifth Circuit has held that officers may not "disregard plainly exculpatory evidence even if substantial inculpatory evidence suggests probable cause." *Bigford v. Taylor*, 834 F.2d 1213, 1218 (5th Cir. 1988).

C. The Conflict Is Outcome-Determinative

The Ninth Circuit's approach is fundamentally different. The panel listed the 0.00 BAC as a factor supporting probable cause—not as a factor weighing against it. Appendix A at 4. It treated possession of a lawful, sealed cannabis product as inculpatory. *Id.* And it credited the officer's "signs of impairment" characterization without asking whether those signs retained any force once objective tests eliminated both alcohol and HGN-detectable substance impairment. *Id.*

This is precisely the "divide-and-conquer approach" that the Eighth Circuit forbade in *Galanakis*. There, the court examined the same type of evidence the Ninth Circuit relied on—minor FST deviations, purportedly inconsistent statements, a post-0.00 pivot to marijuana—and concluded that these isolated indicators "would not suggest a substantial chance of marijuana intoxication to any reasonable officer when observed in the context of the stop as a whole." *Galanakis* at 10. The Ninth Circuit never conducted this contextual analysis.

This conflict in approach is outcome-determinative in cases like this one. Under the approach of the Fifth, Sixth, Seventh, and Eighth Circuits, the exculpatory evidence here would defeat probable cause. Under the Ninth Circuit's approach, those same facts are either ignored, recharacterized as inculpatory, or treated as irrelevant. The qualified immunity holding below reinforces the need for this Court's guidance: the district court found that Petitioner 'has not identified any cases holding that officers with similar information lack probable cause.' Appendix B at 15, precisely because this Court has never addressed this recurring question.

III. THE LOWER COURTS' FRANKS ANALYSIS IMPROPERLY RECONSTRUCTED PROBABLE CAUSE RATHER THAN ASKING WHAT THE MAGISTRATE WOULD HAVE DONE

Both courts below stated the correct *Franks* standard: materiality requires "a showing that the judge 'would not have issued the warrant with false information redacted, or omitted information restored.'" Appendix A at 4 (quoting *Lombardi v. City of El Cajon*, 117 F.3d 1117, 1126 (9th Cir. 1997)). But neither court applied it. Instead, both conducted their own independent probable cause analysis — listing the remaining factors and concluding probable cause 'remains after amendment.' Appendix A at 4–5; Appendix B at 16–17. The district court compounded this error by addressing only two of the warrant's omissions in its Franks analysis — the undisclosed condition of the cartridge and the Woods discrepancy — while dismissing the driving characterization as immaterial in a single sentence, Appendix B at 13, and never addressing the compressed and reframed statements, the failure to present the zero-clue HGN result, or the interpretive spin placed on the 0.00 BAC. Appendix B at 16–17. A materiality analysis that examines only a fraction of the omissions cannot reliably assess what the magistrate would have done with a complete and accurate affidavit.

That framing creates a serious constitutional distortion. Franks asks what the issuing magistrate would have done with a corrected affidavit, not what the reviewing court thinks about probable cause. The distinction matters because the warrant affidavit's framing was not neutral. Consider what Judge Burton actually reviewed: an affidavit stating that Petitioner ran a red light and crashed into a car (omitting that his vehicle was initially stopped, suggesting reckless driving rather than a mistaken signal); that relied on a witness whose account had already been contradicted by video evidence; that Petitioner "admitted to visiting a marijuana store" and "said yesterday before changing it to a year ago" — omitting that Petitioner repeatedly denied using cannabis, and framing a lawful store visit as an admission and a corrected answer as a lie; that the driver "had a disposable cartridge containing THC fluid" (suggesting a used product rather than a sealed, unopened one); that FSTs showed impairment (without fairly presenting the zero-clue HGN result); and that the breath test was "inconsistent with the signs of impairment" (the officer's interpretive spin rather than the raw 0.00 result).

A corrected affidavit would have told a materially different story: Petitioner's vehicle was stopped at a red light before proceeding through the intersection; the witness's account of the collision had been partially discredited by video evidence; Petitioner repeatedly denied using cannabis, lawfully purchased a sealed cartridge from a licensed store — conduct that millions of Americans can engage in — and gave answers that, read in full, were responsive to escalating questions rather than evidence of deception or impairment; the cartridge was sealed and unopened; a standardized eye-tracking test showed zero clues of intoxication; and the breath test confirmed zero alcohol. The error below is structural: the reviewing court sustained the warrant by performing its own probable-cause calculus rather than assessing whether the issuing magistrate, presented with a complete and accurate affidavit, would have issued the warrant.

This Court should clarify that *Franks* materiality requires a genuine inquiry into what the issuing magistrate would have done with a corrected affidavit—not an independent judicial reconstruction of probable cause that effectively renders the Warrant Clause's oath-or-affirmation requirement a dead letter.

IV. THE QUESTION WILL RECUR NATIONWIDE IN LEGAL-CANNABIS JURISDICTIONS

This case presents a constitutional question of enormous practical significance. Twenty-four states and the District of Columbia have legalized recreational cannabis; forty states permit medical use. More than 170 million Americans live in jurisdictions where purchasing, possessing, and using cannabis is lawful. *See* Nat'l Conference of State Legislatures, State Medical Cannabis Laws (2025).

Yet there is no reliable roadside test for cannabis impairment. Unlike alcohol, where a breath test provides an immediate, objective measure of intoxication, no equivalent exists for cannabis. THC can remain detectable in blood for days or weeks after any impairing effects have dissipated. The Standardized Field Sobriety Tests were designed and validated for alcohol; their reliability for cannabis is scientifically contested. As the Eighth Circuit recognized in *Galanakis*, "marijuana diminishes a person's temporal and spatial judgment, but the Standard Field Sobriety Test does not measure those effects." No. 24-1275, at 9 (quoting *State v. Wenzel*, 987 N.W.2d 473, 483 (Iowa Ct. App. 2022)); see also *Commonwealth v. Gerhardt*, 477 Mass. 775, 791 (2017) (prohibiting "pass/fail" FST testimony in cannabis cases). Peer-reviewed research has found that standardized field sobriety testing has limited specificity for detecting cannabis impairment and may produce false positives even in placebo subjects. *See* Marcotte et al., Evaluation of Field

Sobriety Tests for Identifying Drivers Under the Influence of Cannabis: A Randomized Clinical Trial, 80 JAMA Psychiatry 914, 918 (2023).

This evidentiary gap creates a recurring constitutional problem. In every legalization state, officers will encounter drivers who lawfully possess cannabis products, who may have residual THC from lawful prior use, and who exhibit ambiguous FST indicators. Without guidance from this Court, two consequences will occur with increasing frequency:

First, lawful cannabis possession will function as a de facto probable cause enhancer. That happened here: a sealed, unopened, lawfully purchased cannabis cartridge was listed as a factor supporting probable cause. Under this reasoning, any of the millions of Americans who lawfully purchase cannabis and then drive home face heightened arrest risk if they are involved in a traffic accident, a routine traffic stop, or any encounter with law enforcement.

Second, officers will continue to recharacterize negative test results as evidence of drug impairment. The reasoning here — that a 0.00 BAC was "inconsistent with the signs of impairment" — creates an unfalsifiable framework insulating probable cause determinations from meaningful judicial review. In this case, that framework operated exactly as designed: the officer identified no recognized indicators of cannabis impairment — no odor of marijuana, no bloodshot eyes, no dilated pupils — yet the absence of alcohol alone became the basis for suspecting drugs.

This Court's intervention is needed to establish a constitutional floor for cannabis DUI probable cause in legalization states.

V. THIS CASE IS AN IDEAL VEHICLE

This case presents the questions cleanly.

Developed record. The relevant events are documented by body-worn camera footage, police reports, the warrant materials, and the decisions below. The courts below treated the record

as sufficient to resolve the case on summary judgment. This case therefore cleanly presents the legal questions of whether the asserted factors can establish probable cause and whether the omitted information was material under *Franks*.

Every objective measure was negative. The BAC was 0.00. The HGN showed zero clues. The blood test showed insufficient THC to report. The charges were dismissed with prejudice. No court need speculate about whether Petitioner was actually impaired.

The cannabis product was lawful, sealed, and unopened. There is no question about recent consumption. The physical evidence corroborates Petitioner's corrected statement that he had not recently used.

No alternative grounds for affirmance. The lower courts identified no other basis for probable cause beyond the five factors at issue. There are no procedural defects, standing issues, or mootness concerns.

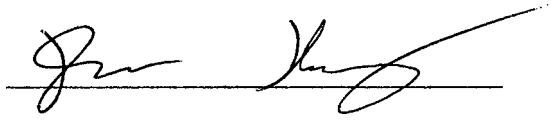
Severe constitutional intrusion. The warrant authorized a compelled blood draw—a bodily intrusion subject to the Fourth Amendment's highest protections. Petitioner was jailed and prosecuted for nearly a year before dismissal.

National impact. The Ninth Circuit's approach governs one-fifth of the nation's population. Cannabis legalization continues to expand. The question presented will recur in every legalization state until this Court provides guidance.

CONCLUSION

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

Respectfully submitted,



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