

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL HARRIS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record

A. TYSEN DUVA
Assistant Attorney General

WAJDI C. MALLAT
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether petitioner's claim that there was no probable cause to search his vehicle, despite a police officer's detection of the odor of marijuana, warranted appellate relief.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. Tenn.):

United States v. Harris, No. 22-cr-43 (Oct. 2, 2024)

United States Court of Appeals (6th Cir.):

United States v. Harris, No. 24-5944 (Dec. 19, 2025)

IN THE SUPREME COURT OF THE UNITED STATES

No. 25-7478

MICHAEL HARRIS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A8-A12) is available at 2025 WL 3689136. The memorandum opinion and order of the district court is unreported. The report and recommendation of the magistrate judge is available at 2023 WL 6371623.

JURISDICTION

The judgment of the court of appeals was entered on December 19, 2025. The petition for a writ of certiorari was not filed until March 24, 2026, and is five days out of time under Rule 13.1 of the Rules of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of Tennessee, petitioner was convicted of possessing 50 grams or more of methamphetamine with intent to distribute, in violation of 21 U.S.C. 841(a)(1), 851, and 21 U.S.C. 841(b)(1)(A) (2018); and possessing firearms and ammunition following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2) (2018). Judgment 1. The district court sentenced him to 380 months of imprisonment, to be followed by ten years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A8-A12.

1. On April 24, 2022, local and federal officers were running a joint surveillance operation to detect illegal firearm sales at a gun show in Knoxville, Tennessee. Pet. App. A8. Officers suspected a man (later identified as petitioner) to be engaged in illegal firearm purchases, and they followed his van after he left the gun show. Id. at A8-A9.

A detective reported observing the van make an illegal turn, and the officers initiated a traffic stop. Pet. App. A9. Upon approaching the van, one officer smelled what he believed to be the odor of burnt marijuana emanating from the van's open window. Ibid. Based on that odor, the officer informed petitioner that he planned to search the van. Ibid. Petitioner "admitted that he and his passenger had probably smoked marijuana the previous day." Ibid. The officer instructed petitioner to exit the van for a

frisk. Ibid. Inside the van, officers found a marijuana grinder, ammunition, firearms, and a suitcase containing almost a kilogram of methamphetamine. Id. at A9-A10.

As officers were beginning to search the suitcase, petitioner got back into the van and fled. Pet. App. A9. He crashed into two other vehicles and was arrested. Id. at A9-A10.

2. A grand jury in the Eastern District of Tennessee charged petitioner with possessing 50 grams or more of methamphetamine with intent to distribute, in violation of 21 U.S.C. 841(a)(1), 851, and 21 U.S.C. 841(b)(1)(A) (2018); possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A); and possessing firearms and ammunition following a felony conviction, in violation of 18 U.S.C. 922(g). Indictment 1-2.

Petitioner moved to suppress the evidence recovered from the van. Pet. App. A10. He contended in that motion that the officers lacked probable cause to conduct a traffic stop because "no traffic violation occurred." D. Ct. Doc. 46, at 5 (May 24, 2023). Following an evidentiary hearing before a magistrate judge, petitioner further contended that the officer had not in fact detected the odor of marijuana coming from the van. D. Ct. Doc. 53, at 4-5, 7 (July 21, 2023).

The magistrate judge recommended that petitioner's suppression motion be denied. D. Ct. Doc. 61 (Sept. 1, 2023). The magistrate judge made a finding of fact that the officer smelled

the odor of marijuana coming from the van, crediting the officer's testimony to that effect. Id. at 20; see id. at 16-18. And the magistrate judge therefore determined that the officers had probable cause to search the van, citing circuit precedent for the proposition that an "officer's detection of the smell of marijuana in an automobile can by itself establish probable cause for a search." Id. at 32 (quoting United States v. Elkins, 300 F.3d 638, 659 (6th Cir. 2002)); see id. at 34.

Petitioner objected to the magistrate judge's factual finding that the officer smelled marijuana. See D. Ct. Doc. 71, at 5 (Nov. 30, 2023). The district court overruled petitioner's objection, adopted the magistrate judge's recommendation, and denied the motion to suppress. D. Ct. Doc. 74, at 15-18 (Jan. 9, 2024).

Petitioner pleaded guilty to the first (drug-possession) and third (felon-in-possession) counts of the indictment. D. Ct. Doc. 95, at 1 (May 21, 2024). The district court sentenced him to 380 months of imprisonment, to be followed by ten years of supervised release. Judgment 2-3.

3. On appeal, petitioner contended for the first time that the odor of marijuana did not establish probable cause to search a vehicle because it is indistinguishable from the odor of legal hemp. Pet. C.A. Br. 37-44. In response, the government argued that "[b]ecause it is new on appeal, this argument should be reviewed only for plain error," Gov't C.A. Br. 21, and that petitioner's argument lacked merit, id. at 19-24.

The court of appeals affirmed in an unpublished opinion. Pet. App. A8-A12. The court reasoned that it was bound by its recent binding decision in United States v. Santiago, 139 F.4th 570 (6th Cir. 2025), which had "rejected" the argument "that burnt marijuana smells the same as burnt hemp, which is legal" and that "thus, marijuana odor alone did not provide probable cause to search his vehicle." Pet. App. A12 (quoting Santiago, 139 F.4th at 575). "In that case," the court explained, "the arresting officers' testimony that they had never encountered anyone smoking hemp supported the panel's conclusion that, to a 'reasonable officer,' a marijuana-like odor is so likely to indicate marijuana that it establishes probable cause" for officers to "believe 'that marijuana is present where they smell it.'" Ibid. (quoting Santiago, 139 F.4th at 574-575).

ARGUMENT

Petitioner contends (Pet. 5-12) that the odor of marijuana no longer provides probable cause to search a vehicle because it is indistinguishable from the odor of legal hemp. The petition can appropriately be denied because it is untimely and petitioner did not seek leave to file it out of time. In any event, the court of appeals correctly rejected petitioner's contention, and its unpublished opinion does not conflict with any decision of this Court, another court of appeals, or a state supreme court. In addition, this case would be an unsuitable vehicle for resolving the question presented because petitioner's contention would be

reviewable only for plain error. This Court has recently and repeatedly denied petitions raising similar issues. See, e.g., Saine v. United States, No. 25-1239 (June 22, 2026); Burney v. United States, 146 S. Ct. 1518 (2026) (No. 25-6326); Nava v. United States, 144 S. Ct. 1367 (2024) (No. 23-6897). The Court should follow the same course here.

1. The petition is untimely and could be denied on that ground alone. The court of appeals entered its judgment on December 19, 2025. Pet. App. A13. Petitioner did not seek rehearing in the court of appeals or an extension of the time to file a petition for a writ of certiorari. Cf. Sup. Ct. R. 13.3, 13.5. Thus, the time for filing a petition for a writ of certiorari expired on March 19, 2026. See Sup. Ct. R. 13.1. The petition was not filed until March 24 and is therefore out of time by five days. Although this Court has discretion to consider an untimely petition in a criminal case if "the ends of justice so require," Schacht v. United States, 398 U.S. 58, 64 (1970); see id. at 63-65, petitioner -- who is represented by counsel -- offers no justification for his untimeliness, and none is apparent from the record.

2. Even if the petition were timely, it would not warrant this Court's review. The court of appeals correctly rejected petitioner's challenge to the denial of his suppression motion, and its decision does not conflict with any decision of this Court, another court of appeals, or a state supreme court.

a. Police may search a vehicle without a warrant "where they have probable cause to believe contraband or evidence is contained." California v. Acevedo, 500 U.S. 565, 580 (1991). Probable cause "is 'a fluid concept' that is 'not readily, or even usefully, reduced to a neat set of legal rules.'" District of Columbia v. Wesby, 583 U.S. 48, 57 (2018) (quoting Illinois v. Gates, 462 U.S. 213, 232 (1983)). Instead, "probable cause 'deals with probabilities and depends on the totality of the circumstances,'" ibid. (quoting Maryland v. Pringle, 540 U.S. 366, 371 (2003)), including "the factual and practical considerations of everyday life," Pringle, 540 U.S. at 370 (quoting Gates, 462 U.S. at 231). Accordingly, a probable-cause determination "does not deal with hard certainties," and evidence "must be seen and weighed * * * as understood by those versed in the field of law enforcement," who are entitled to "formulate[] certain common-sense conclusions about human behavior." Gates, 462 U.S. at 231-232 (quoting United States v. Cortez, 449 U.S. 411, 418 (1981)).

The probable-cause standard "is not a high bar." Wesby, 583 U.S. at 57 (quoting Kaley v. United States, 571 U.S. 320, 338 (2014)). To the contrary, it "requires only the kind of fair probability on which reasonable and prudent people, not legal technicians, act." Kaley, 571 U.S. at 338 (brackets, citation, and internal quotation marks omitted). And it "does not require the fine resolution of conflicting evidence that a reasonable-

doubt or even a preponderance standard demands." Gerstein v. Pugh, 420 U.S. 103, 121 (1975); see Gates, 462 U.S. at 235.

Applying those principles, the court of appeals correctly recognized that probable cause supported the search of petitioner's vehicle. As petitioner acknowledges (Pet. 7), "[v]ehicle searches have been routinely upheld" based on officers' detection of the odor of marijuana. The court here noted that testimony in a prior case that the arresting officers "had never encountered anyone smoking hemp" supported the determination that "a marijuana-like odor is so likely to indicate marijuana that it establishes probable cause." Pet. App. A12. And this Court has itself recognized that a "reasonable officer could infer, based on the smell, that marijuana had been used." Wesby, 583 U.S. at 58 n.5 (citing Johnson v. United States, 333 U.S. 10, 13 (1948)).

Contrary to petitioner's contention (Pet. 5-7), the recent legalization of hemp does not suggest that those precedents should be overruled. As the court of appeals has explained, the odor of marijuana still establishes probable cause to search a vehicle "even though illicit marijuana" may "smell[] like legal hemp" because "probable cause 'does not require officers to rule out' an 'innocent explanation for suspicious facts.'" Santiago, 139 F.4th at 575 (quoting Wesby, 583 U.S. at 61). Because probable cause "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity," an officer need not eliminate the possibility that an apparent odor of marijuana

in fact comes from hemp. Wesby, 583 U.S. at 57 (quoting Gates, 462 U.S. at 244 n.13). Petitioner attempts (Pet. 6) to analogize to the plain-view doctrine, but that doctrine similarly requires only that officers have "probable cause to believe," not certainty, "that an object is plain view is contraband." Minnesota v. Dickerson, 508 U.S. 366, 375 (1993).

Moreover, petitioner has not attempted to rebut testimony, consistent with common experience, that officers do not actually "encounter[] anyone smoking hemp," as opposed to marijuana. Pet. App. A12.* That "common-sense conclusion[] about human behavior" by "law enforcement officers," Gates, 462 U.S. at 231-232 (citation omitted), further supports the decision below. The odor of marijuana thus continues to provide officers with "a particularized and objective basis for suspecting the particular person stopped of criminal activity," Navarette v. California, 572 U.S. 393, 396 (2014) (quoting Cortez, 449 U.S. at 417-418), not "mere speculation" or a "hunch" (Pet. 7).

b. The decision below does not conflict with any of the state cases on which petitioner relies. He asserts (Pet. 7) that "the trend appears to" support his position, citing three cases. But none of those cases agreed with petitioner that an officer's

* Although that testimony was introduced in a prior case, petitioner's failure to raise his hemp-based argument in the district court deprived the government of the opportunity to introduce similar evidence in this case. See pp. 10-11, infra (discussing forfeiture).

detection of the odor of marijuana can no longer establish probable cause to search a vehicle in light of the legalization of hemp.

In State v. Green, 697 S.W.3d 634 (2024), the Supreme Court of Tennessee rejected a defendant's contention that, due to the similarity of marijuana and hemp, a drug-sniffing dog's detection of marijuana could not contribute to a finding of probable cause to search his vehicle. See id. at 640-645. It does not establish that the state court would necessarily accept petitioner's argument here. And the other two state cases are inapposite because they did not address the effect of hemp's legalization on the probable-cause inquiry, but instead other state laws that decriminalized the possession of marijuana itself in certain circumstances. See Commonwealth v. Barr, 266 A.3d 25, 28 (Pa. 2021); Lewis v. State, 233 A.3d 86, 91 (Md. 2020). That issue is not presented here.

3. At all events, this case is an unsuitable vehicle to address the question presented because petitioner's challenge would be reviewable only for plain error, as the government argued below. Gov't C.A. Br. 21. During the proceedings on the motion to suppress in the district court, petitioner's objections to probable cause rested on his factual contentions that no traffic violation had occurred and that the officer did not, in fact, smell the odor of marijuana. See pp. 3-4, supra. Not until his appeal did petitioner assert, for the first time, his present argument that the odor of marijuana is legally insufficient to establish

probably cause to search a vehicle because it is indistinguishable from the odor of hemp. See Pet. C.A. Br. 37-43.

Although the court of appeals had no need to reach the preservation issue, see Pet. App. A12, it is apparent that petitioner did not preserve his new claim in district court, which means that it is reviewable only for plain error. See Fed. R. Crim. P. 52(b); United States v. Olano, 507 U.S. 725, 731-732 (1993). To establish reversible plain error, petitioner must demonstrate (1) error; (2) that is clear or obvious; (3) that affected substantial rights; and (4) that seriously affected the fairness, integrity, or public reputation of judicial proceedings. Olano, 507 U.S. at 732-736; see, e.g., Puckett v. United States, 556 U.S. 129, 135 (2009). Petitioner does not even attempt to show that he could satisfy the plain-error standard, nor is it apparent that he would be entitled to relief as a practical matter, even if he were to prevail on the question presented.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

A. TYSEN DUVA
Assistant Attorney General

WAJDI C. MALLAT
Attorney

SEPTEMBER 2026