No. 26-_____

In the
Supreme Court of the United States

RANDALE CHAPMAN,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Courts have historically held that an officer has probable cause to search an automobile when he smells cannabis. In recent years, however, most States have legalized cannabis to at least some degree. Put another way, the smell of cannabis is no longer proof positive of a crime. Notwithstanding the sea change in the status of cannabis under the law, most (but not all) federal circuit courts continue to treat the smell of cannabis alone as establishing probable cause for a vehicle search. By contrast, most state courts diverge from this approach and hold that the smell of cannabis no longer establishes probable cause for a search.

The question presented is:

Whether, in the wake of widespread cannabis decriminalization and legalization, the smell of cannabis alone provides police with probable cause to search an automobile.

PARTIES TO THE PROCEEDING

Pursuant to this Court's Rule 14.1(b)(i), petitioner submits that there are no parties to the proceeding other than those named in the caption of the case.

Petitioner Randale Chapman was the defendant in the district court and appellant below.

Respondent United States of America was the plaintiff in the district court and appellee below.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings in the U.S. District Court for the Western District of Pennsylvania and the U.S. Court of Appeals for the Third Circuit:

United States v. Randale Chapman, No. 2:11-cr-045-07 (W.D. Pa.) (Feb. 14, 2024)

United States v. Randale Chapman, No. 2:21-cr-073-01 (W.D. Pa.) (Feb. 14, 2024)

United States v. Randale Chapman, No. 2:21-cr-133-01 (W.D. Pa.) (Feb. 14, 2024)

United States v. Randale Chapman, No. 24-1309 (3d Cir.) (Apr. 22, 2026)

United States v. Randale Chapman, No. 24-1310 (3d Cir.) (Apr. 22, 2026)

United States v. Randale Chapman, No. 24-1311 (3d Cir.) (Apr. 22, 2026)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Randale Chapman respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The Third Circuit's Opinion is unreported but available at 2026 WL 1091581 and is reproduced at Pet. App. 1a–11a. The district court's opinion denying Mr. Chapman's motion to suppress is unreported but available at 2023 WL 4058927 and is reproduced at Pet. App. 13a–43a.

JURISDICTION

The Third Circuit issued its opinion on April 22, 2026 and denied Mr. Chapman's petition for rehearing on June 29, 2026. On September 25, 2026, Justice Samuel A. Alito, Jr., extended the time to file a petition for certiorari from September 28, 2026 to October 27, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the U.S. Constitution states:

> 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.

INTRODUCTION

The Court should grant this petition to resolve an important issue that is dividing state and federal courts: In light of changing cannabis laws around the country, should the smell of cannabis alone give police officers probable cause to conduct warrantless vehicle searches?

The Fourth Amendment generally prohibits warrantless searches, but this Court has recognized an exception for automobiles: Officers may search an automobile without a warrant if they have probable cause to believe they will find evidence of a crime. *See Collins v. Virginia*, 584 U.S. 586 (2018). Decades ago, law enforcement perfected an essentially unreviewable way to satisfy that standard—police can claim to smell marijuana during routine traffic stops. Historically, marijuana was illegal virtually everywhere without qualification, so if an officer smelled it, criminal evidence was likely nearby. From that premise, state and federal courts coalesced around a straightforward rule: The smell of marijuana *alone* gives police probable cause to search a car.

That rule made sense when cannabis was broadly illegal, but it makes little sense today. The overwhelming majority of States have legalized or decriminalized cannabis in some capacity—either recreationally, for medical use, or at least in the case of hemp. And the federal government has, likewise, recognized that hemp is legal, all but ceased enforcing federal marijuana laws, and is in the process of

rescheduling marijuana. At the present time, cannabis usage is "widespread and increasingly considered socially acceptable in many quarters. And from a practical standpoint, law enforcement widely tolerates the use of marijuana." *United States v. Hemani*, 608 U.S. 772, 808 (2026) (Alito, J., concurring). In part, for this reason, this Court held in *Hemani*, that the Second Amendment prevents the government from disarming citizens based on their occasional use of marijuana. It explained that, because the federal government "helped fuel" changing views on cannabis, it is "awkwardly positioned to suggest that the millions of Americans who now regularly use marijuana are categorically and unusually dangerous." *Id*. at 793. The same could be said of the government's continued reliance on the smell of cannabis alone to justify untold numbers of warrantless automobile searches.

As cannabis laws have changed, police have not curtailed their reliance on cannabis odor to justify warrantless vehicle searches. Instead, they have doubled down. To the contrary, "[s]ince the recognition of the plain smell doctrine, the odor of marijuana has been used with increased frequency as the basis for probable cause to conduct warrantless searches of vehicles," and has become "the primary tool that officers have relied on to confiscate illegally possessed guns." Alexa Perez, *Cross-Enforcing the Plain Smell Doctrine*, 101 Wash. L. Rev. 581, 618–19 (2026). Confronting these problematic practices, a growing majority of States have recognized that the smell of cannabis *alone* no longer justifies a warrantless vehicle

search. But several federal circuit courts have split from this approach and continue to uphold the plain-smell rule, even in the wake of changing state and federal marijuana laws.

This divergence in how state and federal courts construe the Fourth Amendment creates administrability issues and cries out for this Court's intervention. This case epitomizes the problem: In Pennsylvania, where Petitioner Randale Chapman was arrested, the state high court has held that the smell of cannabis alone does *not* establish probable cause for a vehicle search. But the Third Circuit held below that the very same Pennsylvania officers *can* rely on the smell of cannabis alone for such a search. At minimum, this split of authority confuses the public about this important question when it arises in cases over which state and federal prosecutors have concurrent jurisdiction. Perhaps more importantly, however the split creates perverse incentives for law enforcement to gather evidence it knows will be inadmissible in state courts, only to turn it over for use in federal prosecution. This Court has long rejected similar loopholes like the "silver platter doctrine," and other situations where police can exploit asymmetries between state and federal constitutional protections. *See Elkins v. United States*, 364 U.S. 206 (1960); *Mapp v. Ohio*, 367 U.S. 643 (1961). This Court should, therefore, grant certiorari to harmonize the plain-smell jurisprudence between state and federal courts and stop the emergence of a new, and equally pernicious, silver platter doctrine.

STATEMENT OF THE CASE

A. The Fourth Amendment And "Plain-Smell" Doctrine

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Warrantless searches are "per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). One such exception, the automobile exception, allows officers to "search an automobile without having obtained a warrant so long as they have probable cause to do so." *Collins v. Virginia*, 584 U.S. 586, 592 (2018); *see also Carroll v. United States*, 267 U.S. 132 (1925).

"A police officer has probable cause to conduct a search when 'the facts available to him would 'warrant a person of reasonable caution in the belief" that contraband or evidence of a crime is present." *Florida v. Harris*, 568 U.S. 237, 243 (2013) (cleaned up). Probable cause is a "fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Illinois v. Gates*, 462 U.S. 213, 232 (1983).

Officers can rely on evidence viewed in plain sight when establishing probable cause. The plain-view doctrine provides that officers may seize contraband that they observe in plain view if they are in the location lawfully. *See Coolidge v. New*

Hampshire, 403 U.S. 443, 472 (1971). "What a person knowingly exposes to the public … is not a subject of Fourth Amendment protection," *Katz*, 389 U.S. at 351, so, relatedly, probable cause can be based on "information obtained as a result of observation of an object in plain sight[.]" *Texas v. Brown*, 460 U.S. 730, 739 n.4 (1983) (plurality opinion). "The Fourth Amendment protection has never been extended to require law enforcement officers to shield their eyes" to evidence plainly visible in public. *California v. Ciraolo*, 476 U.S. 207, 213 (1986). When "contraband is left in open view and is observed by a police officer from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and thus no 'search' within the meaning of the Fourth Amendment[.]" *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993). Importantly, though, probable cause exists to seize such plainly viewed evidence only "if its incriminating character is immediately apparent[.]" *Id*. *See also Horton v. California*, 496 U.S. 128, 137 (1990).

A necessary corollary to the plain-view doctrine is what some have termed the plain-smell doctrine. A "human sniff is not a search," and so if "officers can smell drugs … they can use that information[.]" *Florida v. Jardines*, 569 U.S. 1, 15 n.2 (2013) (Kagan, J., concurring). As with plain view, if officers can smell evidence of a crime without conducting a search, that is information that can be part of the probable cause calculus. Stated differently, officers may establish probable cause

with evidence that was plainly detectable to them—by sight or smell—without conducting a search.

"Prior to marijuana reform efforts, state and federal courts generally agreed that the smell of marijuana *alone* emanating from a vehicle created sufficient probable cause to conduct a warrantless search of that vehicle." Alexa Perez, *Cross-Enforcing the Plain Smell Doctrine*, 101 Wash. L. Rev. 581, 596–97 (2026) ("Perez"); *cf. United States v. Johns*, 469 U.S. 478, 482 (1985) (when officers "detected the distinct odor of marihuana, they had probable cause to believe that the vehicles contained contraband"). That is to say, courts have historically recognized that the smell of cannabis alone so clearly indicates a crime that it establishes probable cause to search a vehicle. *See United States v. Hutchinson*, 471 F. Supp. 2d 497, 509 (M.D. Pa. 2007) ("plain smell" doctrine supports "probable cause to justify a search where an officer smells a substance that is immediately apparent to him to be the odor of contraband").

B. Recent Changes To The Legal Status Of Cannabis

The body of Fourth Amendment law discussed above largely predated recent legislative changes around the country to the lawfulness of cannabis. "As of May 2026, forty states and the District of Columbia have legalized medical marijuana, and twenty-four states and the District of Columbia have legalized marijuana for adult recreational use." Perez at 588; *see also* National Conference of State Legislatures,

Cannabis Overview, available at: https://www.ncsl.org/civil-and-criminal-justice/cannabis-overview (last visited Oct. 25, 2026).

There have been major changes at the federal level as well. Since 2014, under the Rohrabacher-Cohen-Farr Amendment, Congress has prohibited the Justice Department from "spending money to prevent states from implementing their laws regarding the legalization of cannabis, removing funding for federal medical cannabis raids, arrests, and prosecutions in states where medical cannabis is legal." Lauren Williams & Samuel D. Hodge, Jr., *The Implications of Legalized Marijuana on Establishing Probable Cause for A Warrantless Search*, 66 St. Louis U. L.J. 267, 287–88 (2022). In 2018, Congress significantly altered the regulation of cannabis as part of the Agricultural Improvement Act of 2018, Pub. L. No. 115-443, 132 State. 4490 ("Farm Bill"). The Farm Bill amended the Controlled Substances Act to exclude hemp from the definition of illegal marijuana. While both hemp and marijuana are cannabis, *i.e.*, they come from the plant Cannabis sativa L., hemp has a tetrahydrocannabinol ("THC") concentration of 0.3 % or less. *United States v. Rivera*, 74 F.4th 134, 135–35 (3d Cir. 2023) (citing 7 U.S.C. § 1639o(1); 21 U.S.C. § 802(16)). Therefore, cannabis is now only an illegal controlled substance federally if its THC content exceeds 0.3 %. Additionally, the Department of Justice is currently in the process of rescheduling certain marijuana products. *See* U.S. Dep't of Justice, *Press Release: Justice Department Places FDA-Approved Marijuana Products and Products*

Containing Marijuana Subject to a Qualifying State-issued License in Schedule III, Strengthening Medical Research While Maintaining Strict Federal Controls (Apr. 23, 2026), available at: https://www.justice.gov/opa/pr/justice-department-places-fda-approved-marijuana-products-and-products-containing-marijuana.

These legalization efforts cast doubt on the ongoing viability of the cannabis plain-smell doctrine. "In most states that have legalized either recreational or medical marijuana, the smell of marijuana alone is no longer sufficient to conduct a warrantless search of a vehicle," either as a matter of state legislation or state court rulings. Perez at 583; *see also* pages 12–14, infra. Meanwhile, most federal courts have lagged behind, with several continuing to explicitly endorse the rule that the smell of marijuana *alone* gives officers a license to search a car without a warrant, even accounting for the current status of cannabis regulation. *See, e.g.*, *United States v. Pavao*, 134 F.4th 649, 656–57 (1st Cir. 2025); *United States v. Jackson*, 103 F.4th 483, 488–90 (7th Cir. 2024); *see also* pages 14–16, infra.

C. Mr. Chapman's Search, Arrest, and Prosecution

On April 30, 2020, Randale Chapman was driving a friend's car in Pittsburgh, Pennsylvania, when he was stopped by police for minor traffic infractions. Pet. App. 15a. During the stop, officers purportedly smelled marijuana, ordered Mr. Chapman and his passenger out of the car, and began searching it. Pet. App. 19a, 23a, 25a. During the search, Mr. Chapman attempted to run away but was quickly

apprehended. Pet. App. 21a, 26a, 28a. Police found some money and pills on Mr. Chapman's person, and a small quantity of marijuana and a pistol in the car. Pet. App. 28a. He was arrested and released on bond but absconded. In February 2021, officers received a tip that Mr. Chapman was living in an apartment building in Pittsburgh. Pet. App. 3a. The officers observed him over several days and eventually arrested him outside the apartment building. They briefly searched the apartment in which he was staying and then obtained a warrant for a search, which uncovered additional drugs and money. Pet. App. 4a.

The government charged Mr. Chapman federally with drug and firearm offenses for both incidents—21 U.S.C. § 841(a)(1) (possession with intent to distribute controlled substances), 18 U.S.C. § 924(c) (firearm possession in furtherance of drug trafficking), and 18 U.S.C. § 922(g)(1) (firearm possession by a felon)—and the court allowed the cases to be joined and tried together. Pet. App. 4a–5a. Mr. Chapman moved to suppress the evidence, arguing, in part, that there was no probable cause to search his car in 2020 based on the smell of marijuana, because cannabis is no longer *per se* illegal. His motion was denied. Pet. App. 13a–43a. Mr. Chapman proceeded to a jury trial and was found guilty. Pet. App. 5a–7a. The court sentenced him to 35 years in prison and Mr. Chapman timely appealed.

Mr. Chapman raised several issues on appeal, including the suppression question. He explained that the smell of cannabis alone no longer provides probable

cause to search a car, because it is not *per se* unlawful under either state or federal law. He also argued that the second search, conducted pursuant to a search warrant, was tainted by, *inter alia*, the prior illegal car search. The government responded, relying on Third Circuit precedent—which preceded most marijuana decriminalization efforts—holding that the "smell of marijuana alone … may establish … probable cause." *United States v. Ramos*, 443 F.3d 304, 308 (3d Cir. 2006).

A panel of the Third Circuit rejected Mr. Chapman's arguments and affirmed his conviction in a non-precedential opinion. Pet. App. 1a–11a. It first reaffirmed the continuing vitality of the rule from *Ramos*, and rejected Mr. Chapman's argument that the case no longer applies because cannabis is no longer *per se* criminal. Pet. App. 9a. It then cited marijuana's status under federal criminal law and Mr. Chapman's lack of a Pennsylvania marijuana card to conclude that the Pennsylvania state police officers who stopped Mr. Chapman had "articulable and particularized grounds to believe that evidence of *illegal* marijuana would be found in [his] car." Pet. App. 9a–10a (emphasis in original). The panel did not address whether law enforcement's subsequent search of his apartment was tainted by the unlawful car search, because it determined the car search was lawful. Pet. App. 10a n.7.

REASONS FOR GRANTING THE PETITION

A. The Shift Towards Legal Cannabis Has Created An Inexplicable Split Among State And Lower Federal Courts Over The Ongoing Viability Of The Marijuana Plain-Smell Doctrine.

Because an overwhelming majority of States have legalized cannabis, at least in part, it should come as no surprise that most state courts have abandoned the rule that the smell of marijuana alone is sufficient to justify a warrantless vehicle search. But that puts them at odds with most federal courts, which generally maintain the old plain-smell rule. There is no sensible explanation for this split—after all, both state and federal courts are operating under the same Fourth Amendment. This divergence leaves citizens unsure of the law and creates perverse incentives for police officers to resurrect the antiquated "silver platter doctrine," whereby state law enforcement can avoid consequences for unlawful searches by simply bringing evidence to federal, rather than state courts. This Court should resolve the lower court disagreement and halt that backslide.

1. State courts have overwhelmingly abandoned the rule that the smell of marijuana alone constitutes probable cause for a search.

A growing majority of state courts have recognized that the smell of marijuana *alone* no longer establishes probable cause, even if it is relevant to the broader totality-of-the-circumstances analysis. *See, e.g.*, *State v. Crocker*, 97 P.3d 93 (Alaska Ct. App. 2004); *Blakes v. Superior Ct.*, 287 Cal. Rptr. 3d 799, 806 (Cal. Ct. App. 2021); *People v. Zuniga*, 372 P.3d 1052 (Colo. 2016); *Juliano v. State*, 260 A.3d 619, 631 (Del.

2021); *People v. Redmond*, 248 N.E.3d 1026 (Ill. 2024); *Commonwealth v. Cruz*, 945 N.E.2d 899 (Mass. 2011); *People v. Armstrong*, ___ N.W.3d ___, 2025 WL 994370 (Mich. June 3, 2025); *State v. Torgerson*, 995 N.W.2d 164 (Minn. 2023); *State v. Harning*, 507 P.3d 145 (Mont. 2022); *State v. O'Brien*, 301 A.3d 370 (N.H. 2023); *State v. Gray*, 274 N.E.3d 312 (Ohio Ct. App. 2025); *State v. Moore*, 488 P.3d 816 (Or. Ct. App. 2021); *Commonwealth v. Barr*, 266 A.3d 25 (Pa. 2021); *State v. Li*, 297 A.3d 908 (R.I. 2023); *State v. Clinton-Aimable*, 232 A.3d 1092 (Vt. 2020). Other States did away with the marijuana plain-smell doctrine by legislation or constitutional amendment. *See, e.g.*, Ariz. Rev. Stat. Ann. § 36-2852(C); Cal. Health & Safety Code § 11362.1(c); Conn. Gen. Stat. § 54-33p(a)(1); D.C. Code § 48-921.02a; Md. Crim. Proc. § 1-211; Mo. Const. art. XIV, § 2; N.J. Stat. Ann. § 2C:35-10(a)(3)(b)(i); N.M. Stat. Ann. § 26-2C-25(C)(1); N.Y. Penal Law 222.05(3)(a), (b); Va. Code Ann. § 4.1-1302(A).

For example, Pennsylvania, where Mr. Chapman was stopped, abrogated the plain-smell rule in 2021 to reflect the 2016 legalization of medical marijuana. *See Barr* , 266 A.3d 25. Applying both its state constitution and the Fourth Amendment, the court explained that the "main pillar supporting the 'plain smell' doctrine," was marijuana's per se illegality, which had been "eliminated" by the Medical Marijuana Act. *Id*. at 41. But given marijuana's situational illegality, the court concluded "that the odor of marijuana may be a factor, but not a stand-alone one, in evaluating the totality of the circumstances" for probable cause. *Id*.

A minority of States' courts appear to still endorse the plain-smell doctrine for cannabis, even after broader changes to its legality. *See, e.g.*, *Bain v. State*, 414 So. 3d 168 (Ala. Crim. App. 2024); *Moore v. State*, 211 N.E.3d 574 (Ind. Ct. App. 2023); *State v. Luckett*, 987 N.W.2d 443 (Iowa Ct. App. 2022) (unpublished); *State v. Rogers*, 456 P.3d 557 (Kan. Ct. App. 2020) (unpublished); *State v. Braud*, 431 So.3d 327 (La. 2026); *Days v. State*, 436 So.3d 127 (Miss. Ct. App. 2026); *State v. Seckinger*, 920 N.W.2d 842 (Neb. 2018); *State v. Bolme*, 952 N.W.2d 75 (N.D. 2020); *State v. Roberson*, 492 P.3d 620 (Okla. Crim. App. 2021); *Outlaw v. State*, 721 S.W.3d 730 (Tex. App.—Corpus Christi-Edinburg 2025); *Ray v. State*, 432 P.3d 872 (Wyo. 2018). Notably, in at least some of those States, marijuana remains entirely illegal, so those courts have not squarely addressed how a change in cannabis's legal status alters the Fourth Amendment analysis.

2. Despite changes in state law, most—but not all—federal courts continue to hold that the smell of marijuana establishes probable cause for a search.

Federal circuit courts, by contrast, have been hesitant to overturn the long-standing marijuana plain-smell rule—even in States where recreational marijuana use has been legalized. The First and Seventh Courts have explicitly endorsed the rule's ongoing viability, despite changes to cannabis laws. *See Pavao*, 134 F.4th at 656–57; *Jackson*, 103 F.4th at 488–90. In *Pavao*, the First Circuit rejected the argument that small quantities of marijuana were lawful in Rhode Island, insisting

that "[p]ossession of marijuana in any amount remains a federal crime," just as it was when it first endorsed the plain-smell rule. 134 F.4th at 656 (citing 21 U.S.C. § 844). Likewise, the Seventh Circuit relied on the continued federal criminalization of marijuana to justify its ongoing rule that marijuana's smell alone constitutes probable cause to search. *Jackson*, 103 F.4th at 488. Other circuits have declined invitations to revisit the plain-smell rule post-legalization-efforts, albeit in unpublished opinions like the panel below. *See, e.g.*, *United States v. Harris*, 2025 WL 3296047 (4th Cir. Nov. 26, 2025) (unpublished); *United States v. Murray*, 844 F. App'x 39, 42 (10th Cir. 2021) (unpublished); *United States v. Registe*, 830 F. App'x 708, 710 n.2 (3d Cir. 2020) (unpublished).

At least two federal Circuits have charted a different course and no longer use the per se plain-smell rule. The Ninth Circuit has recognized, in an unpublished opinion, that changes to California state marijuana laws invalidated the marijuana plain-smell doctrine, at least in that state. *United States v. Martinez*, 811 F. App'x 396, 397–98 (9th Cir. 2020) (unpublished); *see also United States v. Talley*, 467 F. Supp. 3d 832, 835–37 (N.D. Cal. 2020); *United States v. Maffei*, 417 F. Supp. 3d 1212, 1223–28 (N.D. Cal. 2019), aff'd, 827 F. App'x 760 (9th Cir. 2020). Instead, the Ninth Circuit appears to follow the odor-plus rule that has been adopted by most state courts. One panel has explained, "It is true that the smell of marijuana alone no longer provides a basis for probable cause. … But, when combined with other factors,

the smell of marijuana may still support probable cause[.]" *United States v. Vasquez*, 2021 WL 3011997, at *2 (9th Cir. Jul. 15, 2021) (unpublished). The Sixth Circuit, similarly, appears to endorse a totality-of-the-circumstances test, rather than a *per se* plain-smell rule. *See United States v. Whitlow*, 134 F.4th 914, 921–23 (6th Cir. 2025).

3. The split between state and federal courts on this question has resurrected the long-abandoned "silver platter doctrine."

The *federal* circuit split above would be reason enough for this Court to intervene. But the more pressing concern is the disagreement between *state* and *federal* courts on this question. Subjecting the same police conduct in States like Pennsylvania to a different set of federal constitutional rules depending on where charges are filed creates significant practice problems. Most notably, the split at issue here has created a new type of "silver platter doctrine," whereby law enforcement can collect evidence in violation of state law, try to admit it in state court, and then, if it is excluded there, simply turn the evidence over to federal authorities for prosecution.

This Court rejected prior versions of the "silver platter doctrine." *See Elkins v. United States*, 364 U.S. 206 (1960). For example, federal courts previously allowed evidence illegally seized by state officers to be admitted in a federal prosecution—even if it was suppressed in state court—so long as federal agents did not participate in the illegal seizure. *Elkins* ended that loophole. This Court explained, "[i]t would be a curiously ambivalent rule that would require the courts of the United States to

differentiate between unconstitutionally seized evidence upon so arbitrary a basis." *Id.* at 215. Similarly, until the Fourth Amendment was incorporated by the Fourteenth Amendment to prohibit unreasonable searches and seizures by state officers, federal officers could "step across the street to the State's attorney with their unconstitutionally seized evidence." *Mapp v. Ohio*, 367 U.S. 643, 658 (1961). But the "very essence of a healthy federalism depends upon the avoidance of needless conflict between state and federal courts." *Id.* at 657–58 (quoting *Elkins*, 364 U.S. at 221).

This Court should grant review to harmonize the federal plain-smell doctrine with the growing majority of state courts. The "federal government and the states operate[] under identical Fourth Amendment restrictions and remedies … any evidence illegally obtained by a state would be inadmissible in either court system." D. Anthony, *Perils of the Reverse Silver Platter Under U.S. Border Patrol Operations*, 16 U. MASS. L. REV. 232, 236 (2021). The very same Fourth Amendment applies in both court systems; the question of whether the same Pennsylvania police conduct requires suppressing evidence derived from a stop cannot depend on whether a state or federal court is answering the question.

The prevailing federal approach adopted by the Third Circuit below results in a "curiously ambivalent rule" which decides the admissibility of evidence on an "arbitrary" basis. *See Elkins*, 364 U.S. at 215. "Federal-state cooperation in the solution of crime under constitutional standards will be promoted, if only by

recognition of their now mutual obligation to respect the same fundamental criteria in their approaches." *Mapp*, 367 U.S. at 658. The marijuana plain-smell doctrine is an improper shortcut employed by some law enforcement, and "[d]enying shortcuts to only one of two cooperating law enforcement agencies tends naturally to breed legitimate suspicion of 'working arrangements' whose results are equally tainted." *Id.* (citation omitted).[1]

B. The Prevailing Federal Approach, Adopted By The Third Circuit Below, Is Wrong: Probable Cause Cannot Be Based On The Smell Of Cannabis Alone.

The panel's decision below was wrong. "The laws on cannabis have changed in such a drastic way as to render the smell of burnt cannabis, standing alone, insufficient to provide probable cause for a police officer to search a vehicle without a warrant." *Redmond*, 248 N.E.3d at 1036–37. The plain-smell doctrine depended on the *per se* illegality of cannabis, but legalization efforts have "eliminated this main pillar supporting the 'plain smell' doctrine as applied to the possession or use of marijuana." *Barr*, 266 A.3d at 41. Cannabis is no longer inherently criminal and so its criminality is not "immediately apparent" from its smell alone. *Cf. Dickerson*, 508 U.S. at 375 (1993) (if "police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object—*i.e.*, if its

[1] The State of Ohio recently made the same argument before the Ohio Supreme Court in defending the plain-smell doctrine, noting the incongruity of excluding such evidence in state courts while admitting it in federal courts. *See* Merit Brief of Appellee State of Ohio, *State v. Dejournett*, No. 26-0647, 2026 WL 2921906, at *16 (Ohio Sept. 29, 2026).

incriminating character is not immediately apparent—the plain-view doctrine cannot justify its seizure" (cleaned up)). When it was illegal *per se*, "simply smelling marijuana indicated a 'substantial chance of criminal activity,'" but where cannabis is "generally legal, the odor of marijuana does not on its own supply a *substantial* basis for inferring a fair probability that contraband or evidence of illegal activity will be found in a particular place." *Armstrong*, 2025 WL 994370, at *5 (citing *Gates*, 462 U.S. at 238, 243 n. 13). A "possible innocent explanation or lawful alternative" made possible by cannabis decriminalization, "does not destroy the fact's usefulness outright," but it does "add a level of ambiguity to a fact's probative value in a probable cause determination[.]" *Zuniga*, 372 P.3d at 1058.

Put more simply, the smell of cannabis alone no longer provides police with probable cause to believe someone has committed a crime, as necessary to conduct a search under the automobile exception. The smell of cannabis should instead be treated like other items such as firearms that are only *potentially* unlawful: Its presence can support probable cause only if the government articulates additional specific facts demonstrating its illegality in the circumstances at issue. *Cf. United States v. Ubiles*, 224 F.3d 213, 217–18 (3d Cir. 2000) (firearm alone did not constitute reasonable suspicion without evidence it was in some way criminal); *United States v. King*, 990 F.2d 1552, 1559 (10th Cir. 1993) (similar). In this way, the smell of cannabis

may still *contribute* along with other evidence to the totality-of-the-circumstances probable cause analysis. But it cannot satisfy the test alone.

Federal courts have generally responded to this argument by asserting that the plain-smell doctrine remains viable because marijuana remains illegal at the *federal* level. *E.g.*, Pet. App. 9a. They have also tried to distinguish the wealth of state cases abandoning the plain-smell rule as involving only state law. The latter point is easily dispelled. State courts assess suppression motions under both their state constitutions *and* the U.S. Constitution, and the identified courts have specifically updated the plain-smell doctrine under the Fourth Amendment. *See, e.g.*, *Barr*, 266 A.3d at 39.

As for the former point, about the status of marijuana under federal law, it also misses the mark in several respects. First, it assumes that *state* law enforcement officers have authority to conduct warrantless searches based on suspicion of an exclusively *federal* crime, even when the state in question has affirmatively approved a defendant's conduct by legalizing recreational marijuana use. That is itself an unresolved antecedent Fourth Amendment issue; courts cannot simply assume the answer. But even assuming state officers possessed authority to conduct warrantless searches based on probable cause of exclusively federal crimes, *cannabis* is not illegal federally unless it exceeds a certain THC level. *See* pages 8–9, supra. While several courts have been dismissive of the distinction, scholars have commented that the

legalization of hemp provides "[p]erhaps the strongest argument that the plain smell doctrine is problematic[.]" Meghan Matt, *In the Age of Decriminalization, Is the Odor of Marijuana Alone Enough to Justify A Warrantless Search?*, 47 S.U. L. Rev. 459, 483 (2020) ("Matt"); *see also* Judge Mary Celeste (Ret.) & Francesca Jenkins, *Cannabis Conundrum*, 46 Seton Hall Legis. J. 489, 543 (2022) ("Celeste"). In addition, "[l]egal hemp and illegal cannabis are indistinguishable by appearance, texture, and odor, such that chemical testing to determine the THC content is now needed to avoid misidentification." *Campbell v. State,* 407 So.3d 558, 563 (Fla. 2025). "Legal hemp and illegal marijuana smell the same, 'both unburned and burned.'" Cynthia A. Sherwood, et. al., *Even Dogs Can't Smell the Difference the Death of "Plain Smell,' As Hemp Is Legalized*, 55 Tenn. B.J. 14, 15 (Dec. 2019). And even "current lab tests are unable to distinguish between the low levels of THC in hemp and the higher amounts in marijuana." Matt at 483.

In sum, there is simply no justification for the odor of cannabis to continue to authorize warrantless vehicle searches when it has been so widely decriminalized. Instead, as most state courts have, the smell of cannabis can be part of the probable cause calculus, but cannot establish probable cause alone.

C. This Case Is An Ideal Vehicle to Decide A Critically Important Question With Widespread Impact.

1. The question presented is of widespread importance.

Millions of Americans use cannabis, often lawfully, and yet most are likely unaware that they could be forfeiting any privacy expectations in their cars. Law enforcement's continued and outsize reliance on cannabis to justify vehicle searches and other encroachments on the Fourth Amendment is out of step with cannabis's changing legality and broader societal acceptance. The federal government itself is sending mixed signals to citizens, by changing cannabis's legal status and deemphasizing enforcement, while simultaneously justifying untold vehicle searches by the need to police marijuana.

This Court recently acknowledged the federal government's role in deemphasizing marijuana's criminality and normalizing its usage. *See United States v. Hemani*, 608 U.S. 772 (2026) (holding 18 U.S.C. § 922(g)(3) violates the Second Amendment as applied to unlawful users to marijuana). Justice Alito remarked that:

> Marijuana consumption is increasingly common in this country. Many States have legalized its use and sale, and although possession of the drug remains a federal crime, very few persons are convicted of that offense each year. The Government has largely tolerated the production and sale of marijuana when done in accord with state law, and it has allowed a multi-billion-dollar marijuana business to develop. For its part, Congress has restricted the use of appropriated funds to prevent States from implementing laws that allow the use, distribution, possession, or cultivation of medical marijuana, or to prosecute certain parties that produce, distribute, or possess marijuana in compliance with

> state law. In these circumstances, marijuana use today is like alcohol use at the founding. It is widespread and increasingly considered socially acceptable in many quarters. And from a practical standpoint, law enforcement widely tolerates the use of marijuana.

Id. at 807–08 (Alito, J., concurring). Justice Gorsuch, writing for the majority, explained: "Whatever one thinks of these developments, the federal government has not just tolerated them; it helped fuel them. All of which leaves it awkwardly positioned to suggest that the millions of Americans who now regularly use marijuana are categorically and unusually dangerous." *Id*. at 793.

Much the same could be said of the plain-smell doctrine. States and the federal government have signaled acceptance of cannabis, leaving them "awkwardly positioned" to claim that its smell so clearly bespeaks criminality as to automatically justify any and all warrantless vehicle searches. One federal judge has emphasized that *Hemani* "underscores the need to revisit" the similar presumption that a frisk is permissible anytime an officer smells marijuana. *United States v. Carson*, 180 F.4th 650, 660–61 (4th Cir. 2026) (Berner, J., concurring). That intuition is consistent with the countless States that have rolled back the plain-smell doctrine in this context. And yet, police have not tempered their reliance on the plain-smell rule—they depend on it as an enforcement tool with increasing regularity even after cannabis legalization efforts. *See* Perez at 618–19.

The concern with mixed signals on cannabis enforcement is amplified by other problems with the plain-smell doctrine. "Smell is by nature fleeting and evanescent. It also is too easy, after the fact, to assert and essentially impossible to refute." *Blair v. United States*, 665 F.2d 500, 513 (4th Cir. 1981) (Murnaghan, J., dissenting in part). Both data and anecdotal reports suggest that searches based on the smell of marijuana regularly fail to turn up marijuana, which is consistent with studies indicating that people attempting to detect the smell of marijuana make as many false positive as correct reports. Perez at 619–20. In addition, "[w]hile actual data is hard to find, there is a concern that police use the 'magic words' of 'I smell marijuana' to establish probable cause to search vehicles." Lori A. Hoetger, *Rethinking the Automobile Exception*, 93 U. Cin. L. Rev. 677, 691 (2025); *see also, e.g.*, *United States v. Fennell*, 2018 WL 2293966, at *6 (W.D. Tex. May 17, 2018) (finding officers lied about smelling marijuana as a pretext to impermissibly search a car); *United States v. Abarza*, 143 F. Supp. 3d 1082, 1096 (D. Or. 2015) (doubting officer claim of marijuana smell and finding no probable cause).

Marijuana enforcement is frequently used pretextually to justify searches, disproportionately with black and Hispanic suspects. *See, e.g.*, *generally* Amanda Geller & Jeffrey Fagan, *Pot as Pretext: Marijuana, Race, and the New Disorder in New York City Street Policing*, 7 J. Empirical Legal Stud. 591, 591 (2010). And this Court has elsewhere expressed concern about pretextual policing based on technically

unlawful but generally unenforced activity. *Cf. Nieves v. Bartlett*, 587 U.S. 391, 406 (2019) (retaliatory arrest claims may be brought even "where officers have probable cause to make arrests but typically exercise their discretion not to do so" a in the case of jaywalking). Those concerns are all the more powerful here with respect to conduct that states have increasingly *legalized*. Citizens should be protected against the "risk that some police officers may exploit the [search] power[.]" *Id*. (citation omitted).

2. This case presents an ideal vehicle for review.

Recent petitions for certiorari on questions similar to the one presented here have focused their challenge to the continued vitality of the plain-smell rule on *either* changes in state law *or* changes to federal regulation of hemp. Mr. Chapman's petition is unique because *both* aspects of the challenge were pressed and passed upon below. The Third Circuit considered whether changes to both state and federal law on marijuana and hemp warranted revisiting prior circuit precedent on the plain-smell rule. Pet. App. 8a–10a. This petition also derives from a jurisdiction (Pennsylvania) in which law enforcement is subject to different Fourth Amendment rules in state and federal court, highlighting in concrete terms the untenable new silver platter doctrine inherent in the divergence between plain-smell rules in state and federal courts. This Court should accept the invitation from numerous courts and scholars to resolve this question and reconcile the plain-smell doctrine with the changing laws surrounding cannabis. *See, e.g.*, Michael Vitiello, *The End of the War on Drugs, the*

Peace Dividend and the Renewed Fourth Amendment?, 73 Okla. L. Rev. 285, 327 (2021).

CONCLUSION

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

Respectfully submitted,

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