No. _____

In the
Supreme Court of the United States

Justin Dale Little,

Petitioner,

v.

United States of America,

Respondent.

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

Petition for Writ of Certiorari

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Questions Presented for Review

Law enforcement officers have long been tasked with learning "what is required of them under Fourth Amendment precedent" and conforming "their conduct to these rules." *Davis v. United States*, 564 U.S. 229, 241 (2011). This principle undergirds the rule of law and determines when law enforcement may not invoke an exception to the exclusionary rule. But not in Oklahoma.

In 2017, before *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), the Tenth Circuit held in a published, binding opinion that the Muscogee (Creek) Nation had not been disestablished and Oklahoma state authorities could not assert jurisdiction over the reservation for murder cases. *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017). The Circuit nevertheless excused Oklahoma law enforcement's continued assertion of jurisdiction in a suspected murder on the reservation in 2018. The Circuit found that law enforcement acted in good-faith reliance on its historical assertion of jurisdiction because the Circuit had stayed the mandate in *Murphy* until 2020.

The questions presented are:

1. Does staying a mandate affect the binding nature of an appellate court's published opinion that has not been vacated or reversed?

2. Does longstanding law enforcement practice, override binding precedent, and thus receive protection from the good-faith reliance exception to suppression?

Related Proceedings

The prior proceedings for this case can be found at:

- *United States v. Little*, 119 F.4th 750 (10th Cir. 2024),
- *United States v. Little*, No. 23-5077, ECF No. 99 (10th Cir. March 3, 2025), and
- *United States v. Little*, No. 21-cr-162-JFH, ECF No. 73, 2022 WL 16634861, (N.D. Okla. Nov. 2, 2022).

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Petition for Writ of Certiorari

Justin Dale Little petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

Opinions Below

The Tenth Circuit's decision affirming Little's conviction is published in the Federal Reporter at *United States v. Little*, 119 F.4th 750 (10th Cir. 2024). Appx. C. The Tenth Circuit's decision denying rehearing is not published and can be found at *United States v. Little*, No. 23-5077, ECF No. 99 (10th Cir. March 3, 2025). Appx. G. The district court's order denying suppression is not published but can be found at *United States v. Little*, No. 21-cr-162-JFH, ECF No. 73, 2022 WL 16634861, (N.D. Okla. Nov. 2, 2022). Appx. A.

Jurisdiction

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(a). The Tenth Circuit entered its final order denying panel or en banc rehearing on March 3, 2025. The Honorable Justice Neil M. Gorsuch granted Mr. Little's request for a 30-day extension of time to file this petition for writ of certiorari. This petition is thus timely per Sup. Ct. R. 13.5.

Constitutional and Statutory Provisions

U.S. Const. amend. IV:

> 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

This case implicates the rule of law, the Fourth Amendment, and the sovereignty of the Muscogee (Creek) Nation. In 2017, three years before this Court decided *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), the Tenth Circuit published an opinion holding that the Muscogee Reservation was not disestablished and therefore Oklahoma state authorities did not have jurisdiction over a Native American defendant accused of a major crime on the reservation. *Murphy v. Royal*, 875 F.3d 896, 904, 914–22, 929–66 (10th Cir. 2017), *aff'd sub nom. Sharp v. Murphy*, 140 S. Ct. 2412 (2020). Yet in 2018, Oklahoma state law enforcement continued to exercise jurisdiction over major crimes committed on the reservation, including arresting, interrogating, and searching the home and truck of Justin Dale Little during a murder investigation.

Though the state law enforcement's conduct was undeniably illegal and violated the Tenth Circuit's published and binding authority, the Circuit declined to suppress the ill-gotten evidence. Instead, the Circuit determined that the stay of the mandate in *Murphy*, while Oklahoma sought review before this Court, rendered its published opinion non-binding. Therefore, the Tenth Circuit found that state law enforcement acted in objective good-faith reliance on longstanding (illegal) practice of asserting jurisdiction over the Muscogee Reservation.

This Court should grant review. The opinion below contradicts the rule of law and four other circuits' understanding of the minimal ministerial and jurisdictional nature of a mandate. The opinion below, in contradiction with this Court's and

other circuits' caselaw, also expands the good-faith reliance exception to reward, not deter, longstanding illegal conduct.

Statement of the Case

I. Before 2017, the Tenth Circuit suggested that the Muscogee Nation was not disestablished.

In 1987, the Tenth Circuit indicated in a civil matter that the Muscogee Reservation was not disestablished. *Indian Country, U.S.A., Inc. v. Oklahoma ex rel. Oklahoma Tax Comm'n,* 829 F.2d 967 (10th Cir. 1987). In the context of Oklahoma's authority to regulate bingo conducted on Muscogee Nation lands, the Circuit held that bingo was a tribal enterprise immune from state regulation and taxation. *Id.* at 983, 987.

II. In 2017, the Tenth Circuit confirmed in a federal habeas decision that the Muscogee Nation was not disestablished.

In November 2017, the Tenth Circuit confirmed that the Muscogee Reservation remained intact in the federal habeas context. *Murphy*, 875 F.3d at 904, 914–22, 929–66. The defendant in *Murphy* was Native American and the offense occurred on Muscogee Nation land, but he was prosecuted and convicted in Oklahoma state court of murder and received a death sentence. *Id.* at 904–05. The Circuit vacated the state conviction and sentence because Oklahoma lacked jurisdiction: "when an Indian is charged with committing a murder in Indian country, he or she must be tried in federal court" under the Major Crimes Act. *Id.* at 904, 914–15, 966.

III. In 2018, Oklahoma state authorities continued to illegally exercise jurisdiction over the Muscogee Reservation for a crime allegedly committed by a Native American.

Around noon on April 22, 2018, Johnathon Weatherford was found dying on railroad tracks in Jenks, Oklahoma, on the Muscogee Reservation, with a gunshot to the back. It quickly became apparent to Oklahoma state police there was little evidence to work with. There were no eyewitnesses. ROA, Vol. I, at 627.[1] And the forensic evidence failed to meaningfully identify suspects. ROA, Vol. I, at 88, 690; ROA, Vol. II, at 21–22.

After the shooting, individuals who did not witness the crime contacted law enforcement. Hannah Watkins, who lived in another state with her boyfriend but was visiting Jenks and dating Weatherford, had no idea who committed the shooting. But she threw out the name of Justin Little, the father of her child, as a possible suspect. Little was soon to be deployed with the National Guard. But when Little and their son arrived at her home shortly after the shooting was believed to have occurred, Watkins noticed nothing out of the ordinary. ROA, Vol. I, at 590. And she was unaware of prior altercations between Little and Weatherford.

Weatherford's ex-girlfriend and another friend also suspected Little, believing there had been conflict between him and Little. ROA, Vol. I, at 104–05, 124. But neither individual described the supposed conflict nor explained when it may have occurred. ROA, Vol. I, at 104–05, 124. Weatherford's ex-girlfriend, instead, admitted to police that her current boyfriend hated Weatherford because Weatherford abused

[1] The record for this appeal was filed with the Tenth Circuit in three volumes. *See United State v. Little*, 23-5077, ECF No. 21 (10th Cir. Aug. 30, 2023). Little cites herein to Volumes I and II as ROA, Vol. I and ROA, Vol. II, respectively.

her during their relationship. ROA, Vol. I, at 840–41. She also secretly invited Weatherford to her and her boyfriend's apartment just two weeks prior, even though her boyfriend did not want Weatherford in their home. ROA, Vol. I, at 841.

The lead detective focused only on the speculation surrounding Little. The only other evidence state police reviewed consisted of grainy photographs of a white pickup truck—resembling Little's—across the street from the railroad tracks. ROA, Vol. I, at 96–97, 636. Despite the lack of evidence, officers directed Watkins to lure Little back to Jenks. ROA, Vol. I, at 591–92.

Only eight hours after the shooting, and though Little is Native American and the shooting occurred within the reservation, Oklahoma state police arrested Little at gunpoint. They subjected him to custodial interrogations over two days. Between interrogations, officers went to Little's home on the reservation where he lived with his mother. ROA, Vol. I, at 779–80. While questioning Little's mother, officers seized a rifle from the living room where he slept. The state police later obtained a warrant from state court to seize and search Little's white truck. ROA Vol. I, at 108–11, 116–20. From the truck, officers seized a handgun, a lens cap, and an optic lens, and photographed a sticker on the rear window. ROA, Vol. I, at 115, 120.

IV. Post-*McGirt*, Little is tried and convicted in federal court despite Oklahoma's concededly illegal searches and seizures.

Little was convicted in Tulsa County court of first-degree murder after a trial in 2020. *State of Oklahoma v. Little*, CF-2018-1700 (Tulsa Cnty., Okla.). During pendency of his state appeal, this Court confirmed that the Tenth Circuit correctly

held the Muscogee Reservation was not disestablished in *McGirt*, and the state court vacated Little's conviction. In 2021, the federal government charged Little with first-degree murder in Indian Country in 2021.

Little moved to suppress all evidence, including the rifle, his statements, and the evidence derived from the search of his truck. Because Little is Native American and the crime occurred on a federal reservation, state police lacked authority to investigate. The district court denied Little's motion to suppress by applying the good-faith reliance exception to suppression because: (1) the Tenth Circuit stayed the mandate in *Murphy*, the published decision establishing the state acted without authority; and (2) police could rely on past practices. Appx. A.

Little was convicted of first-degree murder and sentenced to mandatory life imprisonment. Appx. B.

V. To avoid suppression, the Tenth Circuit excused the Oklahoma state authorities conduct under the good-faith reliance exception.

The Tenth Circuit affirmed in a published opinion. *United States v. Little*, 119 F.4th 750, 768–70 (10th Cir. 2024). To do so, the Circuit reinvented the good-faith reliance exception by finding binding caselaw did not limit the police conduct. Thus, the Tenth Circuit broadened the good-faith exceptions to require neither good faith nor reliance on the law. The panel held that even though binding Tenth Circuit precedent precluded Oklahoma state authorities from exercising jurisdiction over offenses committed within the Muscogee Nation, the good-faith reliance exception nevertheless applied because: the mandate was stayed in *Murphy*; the decision would have required "an overnight sea change in criminal investigation

and prosecution"; and Oklahoma state officials "appear[ed] … to continue to operate after *Murphy* under the assumption that it had jurisdiction." *Id.* at 768–70.

Little petitioned for rehearing. Appx. D. The petition explained that in holding the stay of mandate affects the binding nature of a published opinion, the Tenth Circuit split from four other circuits. The petition also explained this new iteration of the good-faith reliance exception removed good-faith reliance from the test and instead permits law enforcement to rely on their history of illegal actions to support their continued illegal actions. And though the government was ordered to respond to that petition and provided no support for this new version of the good-faith reliance exception, Appx. E–F, the Circuit denied the petition, Appx. G.

Reasons for Granting the Petition

It is undisputed that because Little is Native American and the offense occurred on the Creek Reservation within the Muscogee Nation, the state police did not have jurisdiction to arrest Little without a warrant or execute state search warrants in April 2018. *Little*, 119 F.4th at 766. Rather than faithfully apply well-established Fourth Amendment law and suppress the fruits of these illegal actions, the Tenth Circuit determined that Oklahoma officers could violate its precedent because the mandate was stayed in *Murphy* and based on Oklahoma authorities' longstanding practice of illegally exercising jurisdiction. *Id.* at 768–70. Both aspects of the Circuit's reasoning warrant review by this Court.

I. Review is warranted on the question concerning the effect of a stay of the mandate on the precedential nature of a published decision.

The first question presented is whether staying a mandate affects the binding nature of an appellate court's published opinion that has not been vacated or reversed. The Tenth Circuit held that the stay of the mandate in *Murphy* deprived the opinion of precedential effect, thus allowing Oklahoma state law enforcement to arrest Little and search his home and truck. *Little*, 119 F.4th at 768–70.[2] This holding has no foundation in the law and creates an unnecessary circuit split.

A. The decision below, allowing a stay of the mandate to deprive an opinion of precedential value, is incorrect and undermines the rule of law.

Judicial opinions are binding unless and until they are vacated or reversed. It "is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). "Judicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 26–27 (1994) (quoting *Izumi Seimitsu Kogyo*

[2] The *Little* opinion also attributed significance to the contents of the motion to stay the mandate and Judge Tymkovich's concurrence accompanying the denial of en banc rehearing in *Murphy*. *Little*, 119 F.4th at 769. But a "concurring opinion . . . does not alter [the] duty to apply binding Tenth Circuit precedent." *Cummings v. Norton*, 393 F.3d 1186, 1189 n.1 (10th Cir. 2005); *see also Alaska v. Troy*, 258 U.S. 101, 111 (1922) (similar). And the *Little* decision cited no legal support for the notion that the substance of a motion to stay the mandate somehow affects the precedential nature of a published opinion. What is more, the government never presented any evidence that the state officers here relied on the stay of the mandate, the motion, or the concurrence when conducting their illegal searches and seizures.

Kabushiki Kaisha v. U.S. Philips Corp., 510 U.S. 27, 40 (1993) (Stevens, J., dissenting)); *see also Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 17, 21 (2023) (recognizing that "lower court judgments are binding and presumptively valid" even if the controversy eventually becomes moot (Jackson, J., concurring)).

But the Tenth Circuit's decision contradicts these bedrock principles. By holding that the stay of the mandate allows law enforcement to ignore and act in direct violation of a published and binding opinion, the Circuit has subverted the notion that judicial opinions are the law and must be followed. Under the Tenth Circuit's rule one cannot know whether precedent is *really* precedent unless one has access to the docket of the case and can ensure that the mandate has *not* been stayed. This rule is not only unworkable and will cause confusion, but also relies on a legally incorrect view of the mandate's function. And it violates longstanding precedent that judicial opinions are binding unless and until they are vacated or reversed.

The history and purpose of a mandate demonstrate that a stay of the mandate in a particular case does not affect the precedential nature of a published decision. The concept of a mandate existed "well before the founding." Jack DiSorbo, *Appellate Court Mandates: An Introduction and Proposed Reform*, 22 Geo. J.L. & Pub. Pol'y 155, 158 (2024). In the 16th and 17th centuries under English common law, the mandate was a commandment of the "judicial of the King or his Justices to have any thing done for the dispatch of Justice" such as a mandate to the sheriff to arrest someone or a mandate to order a person to appear before the court. *Id.* at 159. By the 18th century, the mandate had evolved into a device that encompassed

the commands of the courts of review to the lower courts. *Id.* This version of the mandate was adopted by the federal judiciary at the founding. *Id.* Modernly, and as the Tenth Circuit itself recognizes, the mandate is simply an "an order from an appellate court directing a lower court to take a specified action." *Serrano v. Williams*, 383 F.3d 1181, 1185 (10th Cir. 2004) (quoting Black's Law Dictionary 962 (6th ed. 1990)); *see also Skinner v. Govorchin*, 463 F.3d 518, 522 (6th Cir. 2006) (same, but quoting Black's Law Dictionary at 973 (7th ed. 1999)).

Accordingly, issuance of the mandate "is largely a ministerial function." *Bastien v. Off. of Senator Ben Nighthorse Campbell*, 409 F.3d 1234, 1235 (10th Cir. 2005) (per curiam) (quoting *Finberg v. Sullivan*, 658 F.2d 93, 97 n.5 (3d Cir.1980) (en banc)). Its effect "is to bring the proceedings in a case on appeal . . . to a close and to remove it from the jurisdiction of this Court." *Ostrer v. United States*, 584 F.2d 594, 598 (2d Cir. 1978); *see also In re Sunset Sales, Inc.*, 195 F.3d 568, 571 (10th Cir. 1999) ("Issuance of the mandate formally marks the end of appellate jurisdiction. Jurisdiction returns to the tribunal to which the mandate is directed, for such proceedings as may be appropriate."). Given this jurisdictional role, the "issuance of the mandate is wholly separate from [the Court's] consideration of the merits." *In re Chambers Dev. Co., Inc.*, 148 F.3d 214, 224 n.8 (3d Cir. 1998) (cleaned up). Rather, "the entry of judgment," which here accompanied the issuance of the opinion in *Murphy*, "marks the effective end" to considerations of the merits. *Finberg*, 658 F.2d at 97 n.5.

This limited role of a mandate means that its non-issuance "does not undermine the immediate precedential weight of [the] decision." *Cox v. Dep't of*

Just., 111 F.4th 198, 209 (2d Cir. 2024). A published decision "is final for such purposes as stare decisis, and full faith and credit" as soon as it is issued. *In re Zermeno-Gomez*, 868 F.3d 1048, 1052 (9th Cir. 2017) (cleaned up). Even when courts have "stayed the mandate to allow filing of a petition for certiorari," the published opinion is still "the law of th[e] circuit" and cannot be "ignore[d]." *United States v. Gomez-Lopez*, 62 F.3d 304, 306 (9th Cir. 1995); *see also Yong v. INS*, 208 F.3d 1116, 1119 n.2 (9th Cir. 2000) (courts "have no authority to await a ruling by the Supreme Court before applying the circuit court's decision as binding authority").

Therefore, en banc review, which the Tenth Circuit denied in *Murphy*, or reversal by this Court were the exclusive means for avoiding immediate compliance. *Leatherwood v. Allbaugh*, 861 F.3d 1034, 1042 (10th Cir. 2017); *see also In re Burgest*, 829 F.3d 1285, 1287 (11th Cir. 2016) ("[W]e are bound to follow a prior binding precedent unless and until it is overruled by this court en banc or by the Supreme Court."); *In re Zermeno-Gomez*, 868 F.3d at 1052 (same). Because the *Murphy* opinion was binding when issued, "[r]esponsible law enforcement officers" had to immediately "learn what is required of them" and "conform their conduct to these rules." *Davis v. United States*, 564 U.S. 229, 241 (2011) (cleaned up).

In providing new legal powers to a mandate, the Tenth Circuit is at odds with the binding nature of precedent, undermining the rule of the law. But as eloquently stated by this Court:

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the

> highest to the lowest, are creatures of the law, and are bound to obey it.

United States v. Lee, 106 U.S. 196, 220 (1882). Furthermore, judicial adherence to precedence "is a foundation stone of the rule of law." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 798 (2014). The Tenth Circuit's *Little* opinion cannot be reconciled with these principles. In that Circuit, law enforcement, who are presumed to know the law, *infra*, p. 17, can actively violate that law based on a legally incorrect view of the function of a mandate. This Court should grant review.

B. The decision below provides new legal power for a mandate that conflicts with other circuits.

Additionally, in excusing state police from complying with their legal obligations, the Tenth Circuit has created a split with at least four other Circuits that hold the non-issuance of a mandate is legally irrelevant to the binding nature of a published opinion.

In a civil matter, the First Circuit emphasized its precedent is "good law" whether or not the mandate has been issued. *Glob. Naps, Inc. v. Verizon New England, Inc.*, 489 F.3d 13, 19 (1st Cir. 2007). There, the party who prevailed in a previous appeal before the First Circuit moved for the district court to release the security funds posted by the opposing party before the Circuit had issued the mandate. *Id.* at 17–18. The opposing party appealed the ultimate grant of that motion, arguing the district court did not have jurisdiction to "act" on the motion until the mandate was issued. *Id.* at 18–19. The First Circuit rejected the argument because the district court did not grant the motion to release funds until after the mandate was issued and the Circuit had already vacated the injunction that was

the subject of the first appeal. *Id.* at 19. Given these developments, there was no conflict in the district court allowing the issue to be briefed before the mandate was issued. *Id.* In so holding, the First Circuit recognized that the opposing party was "expected to treat" published opinion "as good law, notwithstanding the ministerial fact that the mandate had not yet issued." *Id.*

The Second Circuit also held that the mandate does not affect the binding nature of its precedent. *Cox v. Dep't of Just.*, 111 F.4th 198, 209 (2d Cir. 2024). In that case, the appellant explained at oral argument that he did not address the published opinion because "he thought that the case might be overturned, or otherwise altered, as a result of the pending petitions before this Court, or through a later-filed petition for writ of certiorari with the Supreme Court." *Id.* The Second Circuit made clear a published opinion "becomes binding precedent when it is decided. The fact that a mandate has not yet issued means only that jurisdiction over the case has not yet shifted back to the district court; it does not undermine the immediate precedential weight of our decision." *Id.* (noting that it was joining the Ninth and Eleventh Circuits).

The Ninth Circuit's "law of the circuit doctrine" holds similarly. *In re Zermeno-Gomez*, 868 F.3d 1048, 1052 (9th Cir. 2017). When rejecting the government's argument that "a decision is not binding on lower courts until the mandate has issued," the Ninth Circuit clarified that "a published decision of this court constitutes binding authority which must be followed unless and until overruled by a body competent to do so." *Id.* (cleaned up). Thus, "a stay of the mandate does not destroy the finality of an appellate court's judgment" and a

published decision is "final for such purposes as stare decisis, and full faith and credit, unless it is withdrawn by the court." *Id.* (cleaned up).

The Eleventh Circuit applied the same rule in a habeas case where the petitioner received the death penalty. *Martin v. Singletary*, 965 F.2d 944, 945 n.1 (11th Cir. 1992). The Eleventh Circuit held that its prior published opinion on actual innocence "was the law in this circuit" despite the stay of the mandate while the petitioner sought review from this Court. *Id.* The Eleventh Circuit confirmed that a "mandate is the official means of communicating [the court's] judgment to the district court and of returning jurisdiction in a case to the district court" and thus "merely delays the return of jurisdiction to the district court to carry out [the court's] judgment in that case." *Id.* A stay of the mandate "in no way affects the duty of [the Circuit] panel and the courts in this circuit to apply" the precedent "as binding authority." *Id.*

This Court should grant review to address the Circuit split on the legal significance of the mandate that the Tenth Circuit has created.

II. Review is warranted to preserve narrow application of the good-faith reliance exception to suppression.

The second question presented is whether mere law enforcement practice can override adherence to binding precedent and receive protection from the good-faith reliance exception. In answering yes, the Tenth Circuit held that the good-faith reliance exception to suppression does not require reliance on any authority. Worse yet, the decision allows officers to ignore binding precedent forbidding their conduct. That decision is wrong under this Court's precedent and cannot be reconciled with

the decisions of other courts of appeals. Review on this question is therefore warranted.

A. The decision below incorrectly broadened the scope of the good-faith reliance exception.

The Fourth Amendment's principal remedy is the exclusion of unlawfully obtained evidence. *Utah v. Strieff*, 579 U.S. 232, 237 (2016). Exclusion functions as a deterrent meant to prevent the reoccurrence of Fourth Amendment violations. *Herring v. United States*, 555 U.S. 135, 139–40 (2009). In light of this purpose, this Court narrowly defines the scope of good-faith reliance to limited circumstances. One such circumstance provides that evidence obtained in good-faith reliance on some external authority will not be excluded, even if that authority is later found to be defective. *Michigan v. Tucker*, 417 U.S. 433, 447 (1974). Because law enforcement in such circumstances do not willfully or even negligently disregard their legal obligations, "the deterrence rationale loses much of its force." *Id.*

The history of the good-faith reliance exception establishes its limited applicability. In *United States v. Leon*, which formally recognized the exception, suppression was inappropriate because the search was authorized by a warrant only later found to be defective. 468 U.S. 897, 913–21 (1984). In subsequent decades, this Court slightly expanded what officers may rely on in good faith. In *Illinois v. Krull*, law enforcement properly relied on a state statute's constitutionality in authorizing a warrantless search. 480 U.S. 340, 355–60 (1987). And in two later cases, exclusion was inappropriate where negligent data entry errors by clerical employees caused the unlawful conduct. *See Arizona v. Evans*, 514

U.S. 1, 11–16 (1995) (court clerk failed to withdraw an arrest warrant that had been quashed); *Herring*, 555 U.S. at 145–48 (police employee failed to learn that an arrest warrant had been recalled). Most recently, this Court recognized that "searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule." *Davis*, 564 U.S. at 232.

The common thread from these cases is that the exclusionary rule seeks to deter police misconduct. *Id.* at 246. Mistakes attributable to others—like judges, legislators, court employees, and police clerks—are simply "not the focus of the rule." *Krull*, 480 U.S. at 350. With the focus on the officers alone, "an assessment of the flagrancy of the police misconduct constitutes an important step in the calculus." *Leon*, 468 U.S. at 911. For simple isolated mistakes, taken in reliance on others, the deterrence rationale operates without much force. *Davis*, 564 U.S. at 238. By contrast, "[t]he deterrent value of the exclusionary rule is most likely to be effective when official conduct was flagrantly abusive of Fourth Amendment rights." *Herring*, 555 U.S. at 143 (cleaned up). Put simply, "deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence" still requires exclusion. *Id.* at 144.

The Tenth Circuit's decision below contravenes this basic understanding of the good-faith reliance exception. It is undisputed that the state officers violated binding precedent. That caselaw clearly established that state law enforcement lacked jurisdiction to arrest Little and execute state search warrants on a federal reservation. *Little*, 119 F.4th at 764–66 (citing *Murphy*, 875 F.3d at 966). Yet the Tenth Circuit found that good-faith reliance still existed. *Id.* at 768. But the court

never identified reliance on any law, a good-faith mistake of another, or another reasonable basis for state officers to believe they could investigate offenses outside their jurisdiction. Rather, the court believed that binding precedent had to give way to the mere historical practices of Oklahoma officials. *Id.* at 768–70.

This broadening of the good-faith reliance exception conflicts with this Court's caselaw. This Court stresses that "[r]esponsible law enforcement officers will take care to learn 'what is required of them' under Fourth Amendment precedent and will conform their conduct to these rules." *Davis*, 564 U.S. at 241 (quoting *Hudson v. Michigan*, 547 U.S. 586, 599 (2006)). This understanding has long informed the dividing line between "conscientious police work" safe from the exclusionary rule and "deliberate" misconduct worthy of the "harsh sanction of exclusion." *Id.* at 240–41. Suppression is required when officers have "knowledge, or may properly be charged with knowledge, that the search [is] unconstitutional under the Fourth Amendment." *United States v. Peltier*, 422 U.S. 531, 542 (1975). That exact scenario presented itself here.

Existing precedent instructed state law enforcement that it lacked authority here, meaning officers committed the "deliberate, reckless, or grossly negligent conduct" that "the exclusionary rule serves to deter." *Herring*, 555 U.S. at 144. In refusing suppression when confronted with such circumstances, the Tenth Circuit's decision below irreconcilably contradicts this Court's Fourth Amendment jurisprudence.

B. The decision below adopts a version of the good-faith reliance exception that conflicts with other circuits.

The Tenth Circuit's broadening of the good-faith reliance exception also conflicts with other circuits. The decision allows officers to ignore binding caselaw—a result no other circuit allows. Most circuits, instead, follow a narrow view of the good-faith reliance exception. In the vast majority of circuits, good-faith reliance exists only when clear and well-settled precedent *authorizes* the actions of officers.

Even before *Davis*, several circuits recognized that good-faith reliance on existing precedent defeated the typical remedy of suppression. But these courts carefully cabined this holding. The Eleventh Circuit "stress[ed]" that "precedent on a given point must be unequivocal before [the court] would suspend the exclusionary rule's operation." *United States v. Davis*, 598 F.3d 1259, 1266 (11th Cir. 2010), *aff'd*, 564 U.S. 229 (2011). The Fifth and Sixth Circuits soon adopted this very same view. *See United States v. Curtis*, 635 F.3d 704, 714 n.28 (5th Cir. 2011); *United States v. Buford*, 632 F.3d 264, 276 n.9 (6th Cir. 2011). In the years since, most other circuits have similarly allowed law enforcement to rely on only precedent "that is clear and well-settled" to provide good faith. *United States v. Sparks*, 711 F.3d 58, 64 (1st Cir. 2013) (cleaned up); *see also United States v. Katzin*, 769 F.3d 163, 174 (3d Cir. 2014) (en banc) (similar); *United States v. Berrios*, 990 F.3d 528, 532 (7th Cir. 2021) (similar). As the Ninth Circuit recently explained, "the good-faith exception applies only when binding appellate precedent expressly instructs the officer what to do. Good faith is not established where existing precedent is

unclear or makes the government's position only plausibly permissible." *United States v. Holmes*, 121 F.4th 727, 734–35 (9th Cir. 2024) (cleaned up).

The Tenth Circuit's opinion here adopts a version of the good-faith reliance exception far afield from the majority view. Rather than address a "plausibly permissible" position, *id.*, the Tenth Circuit authorized law enforcement action that directly contravened governing caselaw. Indeed, this unprecedented expansion of good-faith reliance contradicts even the broadest view of the exception. In the Second Circuit, for instance, officers need not rely on well-settled precedent to avail themselves of good-faith reliance. *United States v. Maher*, 120 F.4th 297, 322 (2d Cir. 2024). Yet even there, good-faith reliance cannot exist "where a relevant legal deficiency" was "previously established in precedent." *Id.* (cleaned up). Therefore, other circuits uniformly hold that the exception cannot attach to "clearly illegal" conduct. *United States v. Rodriguez*, 834 F.3d 937, 941 (8th Cir. 2016).

As a last resort, the decision below relied on the mere practices of Oklahoma state officials to find good-faith reliance. But no court holds that longstanding practice can override binding precedent instructing otherwise. Rather, relevant authority disavows this reliance on past practices. Even the Tenth Circuit previously explained that "the good-faith exception does not apply when officers rely on their own prior conduct." *United States v. Bagley*, 877 F.3d 1151, 1156 (10th Cir. 2017). And other circuits hold that "officers cannot act upon . . . their own notions of what the law ought to be." *United States v. Washington*, 455 F.3d 824, 828 (8th Cir. 2006); *see also United States v. Warner*, 843 F.2d 401, 405 (9th Cir. 1988) ("Mere reliance on the officer's own judgment, however, does not rise to the level of

reasonable reliance required by the Constitution."). This understanding comports with this Court's precedent that suppression is appropriate to deter "recurring or systemic" misconduct, including longstanding police practice known to be unlawful. *Herring*, 555 U.S. at 144.

Because the officers' conduct here would have resulted in suppression in the other circuits, review is necessary to resolve this conflict.

III. These questions involving the role of a mandate and application of the good-faith reliance exception are exceptionally important, and this case presents the best vehicle for review.

Both questions presented are exceptionally important. Ensuring precedent is accorded with its proper effect is critical in every case. *Supra*, at. 8–9, 11–12. Its similarly important to properly construe the scope of the good-faith reliance exception. An overly broad view of the exception deprives the exclusionary rule of its deterrent effect, thereby depriving "respect for the constitutional guaranty" in the Fourth Amendment. *Davis*, 564 U.S. at 217 (cleaned up). Deterring "flagrant abuses" of constitutional rights through the remedy of exclusion removes the very "incentive to disregard it." *Elkins v. United States*, 364 U.S. 206, 217 (1960).

This case is also an excellent companion to the work done by this Court in *McGirt*, and continued in *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022). This Court must ensure that the circuits are correctly respecting tribal sovereignty and the constitutional rights of Native Americans. To permit unlawful conduct on a federal reservation only because longstanding state practice may have allowed it ignores that "the magnitude" and duration "of a legal wrong is no reason to perpetuate it." *McGirt*, 591 U.S. at 934. To hold otherwise erodes tribal governance

and betrays the "promises to tribes like the Creek that they would be free to govern themselves." *Id.* at 898. It would also "elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right." *Id.* at 938.

Finally, this case is an ideal vehicle for this Court to resolve these questions. Both questions were pressed and passed upon below, and the Tenth Circuit thoroughly addressed these issues in its decision. And the government has never contended that, if the good-faith reliance exception does not apply, the admission of the fruits of the illegal searches and seizures are harmless. Therefore, whether the government met its burden under the exception is dispositive of whether Little should receive a new trial. In light of the conflict on these questions, the error in the Tenth Circuit's decision, and the importance of these issues, plenary review is warranted.

Conclusion

This Court should grant Little's petition for writ of certiorari.

Dated this 30th day of June, 2025.

Respectfully submitted,

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