No. 23-

IN THE

Supreme Court of the United States

BENTLEY A. STREETT,
Petitioner,

v.

UNITED STATES,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Before government agents can search a private home, the Fourth Amendment generally requires them to obtain a warrant supported by probable cause. Here, officers applied for, received, and executed a search warrant based on an affidavit that contained no link at all between petitioner and the address they wanted to search. The courts below agreed, and the government conceded, that the warrant did not establish probable cause, so the search was unconstitutional. But the Tenth Circuit still let the government use the resulting evidence because, it reasoned, *if* the magistrate had instead denied the warrant application and pointed out the defects, the government likely would have submitted a revised application that would have established probable cause, and a valid warrant would have issued. The question presented is:

Whether the inevitable-discovery doctrine applies to save evidence obtained through an unconstitutional warrant because, hypothetically, if the magistrate had denied the warrant application and pointed out the defects, the government could have fixed them and obtained a valid warrant.

PARTIES TO THE PROCEEDING

Petitioner is Bentley Streett.

Respondent is the United States of America.

No parties are corporations.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the U.S. District Court for the District of New Mexico and the U.S. Court of Appeals for the Tenth Circuit:

United States v. *Streett*,
1:14-cr-03609-JB (D.N.M. Nov. 27, 2018)

United States v. *Streett*,
No. 22-2056 (10th Cir. Oct. 5, 2023)

No other proceedings in state or federal trial or appellate courts, or in this Court, directly relate to this case.

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PETITION FOR A WRIT OF CERTIORARI

Bentley Streett respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Tenth Circuit.

OPINIONS AND ORDERS BELOW

The Tenth Circuit's opinion is reported at *United States* v. *Streett*, 83 F.4th 842 (10th Cir. 2023), and reproduced at Pet. App. 1a–33a. The district court's order denying Petitioner's motion to suppress is reported at *United States* v. *Streett*, 363 F. Supp. 3d 1212 (D.N.M. 2018), and reproduced at Pet. App. 34a–214a.

STATEMENT OF JURISDICTION

The Tenth Circuit entered judgment on October 5, 2023, and denied a timely petition for rehearing on December 26, 2023. Pet. App. 215a. On March 11, 2024, Justice Gorsuch extended the time to file this petition to April 24, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment provides:

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

INTRODUCTION

This case presents an important and recurring question that has split the circuits and state high courts.

Under the inevitable-discovery doctrine, courts need not suppress evidence obtained in violation of the Fourth Amendment if the evidence "inevitably would have been discovered by lawful means." *Nix* v. *Williams*, 467 U.S. 431, 444 (1984). This doctrine is "an extrapolation from the independent source doctrine": Because "tainted evidence would be admissible if *in fact* discovered" through a source "independent" of any constitutional violation, it equally "should be admissible if it inevitably *would have been* discovered" independently. *Murray* v. *United States*, 487 U.S. 533, 539 (1988) (emphasis added). The inevitable-discovery doctrine thus requires the government to show that it inescapably would have obtained the evidence "by means sufficiently distinguishable" from the unlawful means it actually used. *Nix*, 467 U.S. at 442.

Below, however, the Tenth Circuit extended this doctrine to admit evidence obtained through an unconstitutional warrant—and without any independent, lawful means of discovery. Pet. App. 8a, 14a. Although the parties and the lower courts agreed that the warrant "did not establish probable cause" because it contained no link between the property to be searched and Petitioner Bentley Streett, the Tenth Circuit overlooked that facial defect because, in its view, the warrant "would inevitably have been granted had it originally been denied." *Id.* at 8a, 12a. That is, in "a hypothetical world where the warrant application was denied" for failing to establish probable cause, the government could have "simply added" the missing information and resubmitted the application. *Id.* at 14a–15a. Thus, "a proper warrant likely would have been

obtained had the original application been denied." *Id.* at 15a.

Other circuits and state high courts disagree. The Second Circuit has rejected precisely the same reasoning, and precedent in at least the Sixth and Ninth Circuits would compel the same result. What's more, the Tenth Circuit created an intra-jurisdictional split with the Supreme Court of New Mexico, which has squarely rejected this "we-could-have-done-it-lawfully-so-it-doesn't-matter-that-we-didn't" argument in the defective-warrant context. *State* v. *Haidle*, 285 P.3d 668, 677 (N.M. 2012). Thus, federal courts in New Mexico will admit unconstitutionally obtained evidence that state courts there would exclude. The high courts of Oregon and North Dakota have addressed the issue too, with only the former agreeing with the Tenth Circuit.

The decision below is also wrong. *Nix* requires courts to ask whether, absent the government's misconduct, it inevitably would have found the same evidence through some other lawful means. The Tenth Circuit instead asked whether the government would have obtained the evidence *through the same means* if its agents had acted *in the same way* but the magistrate had given them a do-over with instructions. The court thus focused on the wrong actor (the magistrate instead of the police) and the wrong action (approving the warrant instead of obtaining and executing it). The result is an essentially circular analysis that sidelines the magistrate and undermines the Fourth Amendment's warrant requirement. Under the Tenth Circuit's rule, what ultimately matters is not whether the government did obtain or would have obtained a valid warrant, but merely whether it *could* have done so. That approach thus supplants the warrant requirement with a simple probable-cause inquiry.

What's more, the decision below "conflicts with the Supreme Court's ruling in *United States* v. *Leon*." See Orin S. Kerr, *Does the Inevitable Discovery Exception Include Imagined Revised Attempts to Get Warrants?*, Reason (Oct. 9, 2023), https://shorturl.at/qAES6. Under *Leon*, "evidence obtained . . . in reasonable reliance" on a defective warrant is admissible—but reliance is not reasonable if the warrant application was wholly "lacking in indicia of probable cause." 468 U.S. 897, 900, 923 (1984). The decision below, however, "replaces" *Leon*'s test with a hypothetical inquiry that "effectively erase[s]" "culpable" government misconduct. Kerr, *supra*. And because the Tenth Circuit's rule "matters only if *Leon* doesn't apply," the decision below serves only to admit evidence even when the government's conduct was "entirely unreasonable." See *id.*

This Court should review the decision below.

STATEMENT OF THE CASE

1. In October 2013, Detective Hartsock of Bernalillo County, New Mexico received (by referral from the state attorney general's office) an online tip claiming that Mr. Streett had requested nude photographs from a minor. Pet. App. 58a. The tip included a telephone number, *id.* at 41a, and a subpoena response from the cellular carrier for that phone number identifying Mr. Streett as the subscriber, *id.* at 53a. The carrier's response also indicated that the account address was 4620 Plume Road in Albuquerque. *Id.*

Detective Hartsock sought a search warrant for 4620 Plume Road. But his warrant application "does not discuss the information gleaned from the telephone records that Hartsock obtained" and "does not [explain] how Hartsock decided to search the 4620 Plume

residence or why he believe[d] Streett's personal property or evidence of Streett's alleged criminal activity [would] be found at the residence." Pet. App. 73a. Even so, the magistrate judge telephonically approved the warrant and the government executed it. Based on the evidence so obtained, Mr. Streett was charged with various counts of child pornography and sexual activity with minors. *Id.* at 1a.

2. Mr. Streett moved to suppress the evidence obtained through this warrant because the warrant contained no information tying him or his alleged offenses to the 4620 Plume address. Pet. App. 82a. The district court denied his motion. It agreed that the warrant application "does not allege sufficient facts to establish probable cause to search the 4620 Plume residence" because it "does not . . . indicate Streett's connection with the 4620 Plume residence" and "provides no nexus between the 4620 Plume residence and Streett's personal property." *Id.* at 165a, 195a–97a. But it held that "the good-faith and inevitable-discovery doctrines apply" to allow the evidence anyway. *Id.* at 165a; see *id.* at 198a–210a (analysis).

The Tenth Circuit affirmed. It agreed (as did the government) that "the Search Warrant did not establish probable cause because it failed explicitly to link Mr. Streett to the 4620 Plume residence": The warrant "did not discuss information gleaned from the phone records, why Hartsock decided to search the 4620 Plume residence, or why he believed evidence of criminal activity would be found there." Pet. App. 5a, 8a, 14a. But the court held the evidence admissible under the inevitable-discovery doctrine. Applying circuit precedent that was "admittedly an awkward fit for these facts"—because the precedent asked whether the police had *in fact* obtained a valid warrant after an unlawful *warrantless* search—the court reasoned that

Detective Hartsock "would have obtained a subsequent proper warrant if the deficient application originally had been denied." Pet. App. 14a (emphasis omitted). "In a hypothetical world where the warrant application was denied" because it "failed to establish probable cause that evidence of a crime would specifically be found at the 4620 Plume residence," "Hartsock would have only had to add a single sentence to the Warrant Affidavit to render it proper . . . and Hartsock already had all the information to add that specificity." *Id.* at 14a–15a.

The Tenth Circuit did not consider the district court's alternative good-faith holding. Pet. App. 8a. Thus, it did not address whether Detective Hartsock acted reasonably in obtaining and relying on a facially defective warrant lacking probable cause.

Mr. Streett petitioned for panel and en banc rehearing, supported by multiple amici, pointing to contrary rulings from other federal and state appellate courts. The Tenth Circuit denied the petition. Pet. App. 215a.

REASONS FOR GRANTING THE PETITION

I. Courts of appeals and state supreme courts are split on the question presented.

A. Three circuits and two states reject the Tenth Circuit's reasoning.

1. The Second Circuit and the New Mexico and North Dakota high courts have directly rejected the Tenth Circuit's reasoning.

The Second Circuit addressed a pair of warrants for cell-phone records that "contained numerous misstatements" overstating the evidence linking the defendant to a string of robberies, including by misstating the relevant dates. See *United States* v. *Lauria*, 70 F.4th 106,

117–18 (2d Cir. 2023). The district court ruled that these false statements "were necessary to the issuing judge's probable cause finding," but it denied suppression "because the government 'would have been able to remedy' the acknowledged misstatements" by, for example, "correct[ing] the timing error" in the underlying record requests. *Id.* at 118.

The Second Circuit reversed. Under *Nix*, "the inevitable discovery doctrine requires that the means by which the evidence would inevitably be discovered is independent from the means by which the evidence was actually—and unlawfully—discovered." *Id.* at 123. "The fundamental flaw with the district court's reasoning is that it rests on the assumption that the government, *once alerted to defects in the . . . Warrants*, could easily have corrected or supplemented its initial supporting affidavits and thereby procured lawful warrants." *Id.* at 124. But the doctrine "asks whether the government has shown that it certainly *would have* discovered the evidence by a lawful means even if no warrant had been issued or challenged"—not "whether the government lawfully *could have* obtained the evidence at issue by means of corrected warrant affidavits or that it would have done so after the defense alerted it to defects in its initial affidavits." *Id.*

The doctrine thus did not apply. So far as the record disclosed, "but for the defense's exposure of misstatements in the warrant affidavits, the government would have had no reason—and, therefore, would have been unlikely—to pursue alternative lawful means to procure the evidence at issue." *Id.* In particular, the government had not sought "new warrants lawfully to obtain the challenged evidence" or taken "any steps to correct those affidavits or otherwise ensure probable cause for the warrants they supported." *Id.*

The Supreme Court of New Mexico also refuses to apply the inevitable-discovery doctrine based on the government's hypothetical ability to obtain a valid warrant when it in fact obtained a defective one. In *Haidle*, the state obtained a warrant to search the defendant's home for evidence of a murder using uncorroborated, multi-layer hearsay, which "failed to establish constitutionally adequate probable cause." 285 P.3d at 677. The defendant sought suppression under "both the Fourth Amendment" and its state constitutional analogue. *Id.* at 671. The state responded that "if the magistrate 'had rejected the affidavit the information could have been provided and the warrant could have been fixed.'" *Id.* at 677.

The state high court disagreed. It found "[t]wo major flaws" with this "sweeping we-could-have-done-it-lawfully-so-it-doesn't-matter-that-we-didn't view." *Id.* First, the inevitable-discovery doctrine requires that the evidence "inevitably would have been otherwise discovered through a different and independent lawful means." *Id.* A hypothetical valid warrant that would exist only if the real defective warrant had been rejected is not a "method other than" the unlawful one that actually produced the evidence. See *id.* Second, the state's argument "would make utterly meaningless and unenforceable" the probable-cause requirement for warrants because it "would reduce every challenge to the constitutional adequacy of the probable cause showing in an affidavit to a dispute over whether the police could have prepared a constitutionally sufficient affidavit if they had gone back to do it over correctly." *Id.* at 678.

The Supreme Court of North Dakota agrees. In *State* v. *Handtmann*, the state obtained a warrant using "false information" and "unsupported conclusions." 437 N.W.2d 830, 835 (N.D. 1989). As in *Haidle*, the

defendant sought suppression under "the Fourth and Fourteenth Amendments" and the state constitution. *Id.* at 833–34. The court agreed, "declin[ing] to extend the inevitable-discovery doctrine . . . based upon an assumption that a subsequent search conducted pursuant to a hypothetical search warrant would have resulted in the discovery of the disputed evidence." *Id.* at 838. Applying the inevitable-discovery doctrine in this situation "would render the warrant protections of the Fourth Amendment meaningless," gutting the rule that "a search warrant issued upon insufficient evidence cannot be validated by information known when the warrant was sought but not disclosed to the issuing magistrate" and "encourag[ing] law-enforcement shortcuts." *Id.*; see also 6 Wayne R. LaFave, Search & Seizure § 11.4(a) (6th ed. 2024 update) (endorsing *Handtmann*'s approach).

2. The Sixth and Ninth Circuits have precedent that, while addressing different factual scenarios, would foreclose adopting the Tenth Circuit's reasoning.

In *United States* v. *Lazar*, the Sixth Circuit confronted an unconstitutionally overbroad warrant that sought evidence of healthcare fraud. 604 F.3d 230, 238 (6th Cir. 2010). To avoid suppression, the government argued that "it would have obtained the files" anyway because it could simply have subpoenaed them. *Id.* at 239. The Sixth Circuit rejected that argument. "To establish inevitable discovery, the government must show that the evidence would have been acquired lawfully through an independent source absent the government misconduct." *Id.* The "mere possibility that a subpoena could or might issue" does not make this showing; otherwise, discovery would "always" be deemed inevitable. See *id.* at 241.

And in *United States* v. *Young*, the Ninth Circuit considered an improper warrantless search of the defendant's hotel room, which revealed a firearm. 573 F.3d 711, 722 (9th Cir. 2009). The government asserted that "no warrant was necessary" because police already "had probable cause to arrest" the defendant, and in the course of doing so could have taken the gun "for public safety reasons." *Id.* The court rejected this "circular logic" as effectively erasing the fact that the officer "could have obtained a warrant" but failed to do so. *Id.* And it reaffirmed "a long line of cases" holding that "to excuse the failure to obtain a warrant merely because the officers had probable cause and could have inevitably obtained a warrant would completely obviate the warrant requirement of the [F]ourth [A]mendment." *Id.* at 723 (quoting *United States* v. *Echegoyen*, 799 F.2d 1271, 1280 n.7 (9th Cir. 1986)).

These decisions cannot be reconciled with the reasoning below. Under the Tenth Circuit's analysis, as long as the government could ultimately establish probable cause, its failure to secure a valid warrant is irrelevant. That is precisely the view the Ninth Circuit rejected—and it clashes equally with the Sixth Circuit's rule that the government must show it was actually going to obtain the evidence through some *independent* means, regardless of the constitutional violation.

B. Only one state high court agrees with the decision below.

The Tenth Circuit departed from the decisions above by adopting an inquiry that instead asks whether a valid warrant "would inevitably have been granted had it been initially denied for lack of an adequate showing of probable cause." Pet. App. 12a. Answering that question largely boils down to whether the government "already had" (or could readily obtain) facts

showing "probable cause that evidence of a crime would be found." *Id.* at 14a. But that inquiry will result in the same conclusion every time—if agents had information amounting to probable cause but did not include that information in the warrant application, it will always be the case that they *could* have obtained a valid warrant had the magistrate pointed out their error.

And the Tenth Circuit denied Mr. Streett's petition for rehearing en banc, cementing its outlier position on this issue. Pet. App. 215a.

Only one state high court appears to agree with the Tenth Circuit. In *State* v. *Johnson*, investigators executed a search warrant based on an affidavit that lacked probable cause. 131 P.3d 173, 178 (Or. 2006). The police later obtained a second warrant based on the evidence obtained under the first. *Id.* The Oregon Supreme Court denied suppression. It acknowledged that applying "the inevitable discovery doctrine in the present case is different from its typical application" because the state sought "to excuse the failure of police investigators to obtain a proper warrant on the ground that the *same* investigators could have and eventually would have obtained a proper warrant." *Id.* at 179 & n.6. It still applied the doctrine, however, reasoning that "even if the police had not performed the [first, unlawful] search at all, they could have, and ultimately would have, produced an affidavit that established probable cause." *Id.* at 179–180 (footnotes omitted). This reasoning was based on one investigator's testimony that "had the initial request for [the defective warrant] been denied, he would have sought and obtained another warrant." *Id.* at 180 n.5.

II. The decision below is wrong.

The Tenth Circuit's decision conflicts with this Court's decisions in *Nix* and *Leon* and, if accepted, would significantly undermine the Fourth Amendment's warrant requirement.

A. The decision below clashes with *Nix* in two key ways. *Nix* held that evidence should be admitted if it "ultimately or inevitably would have been discovered by lawful means" despite any constitutional violation. 467 U.S. at 444. As noted, this is "an extrapolation from the independent source doctrine." *Murray*, 487 U.S. at 539. Just as courts should admit evidence that was *in fact* discovered independently of any misconduct, they should also admit evidence that "would inevitably have been discovered" independently. See *Nix*, 467 U.S. at 444. Neither type of evidence is "the product of illegal governmental activity." *Id.*

In *Nix* itself, for example, it did not matter that police found the murder victim's body by unlawfully interrogating the defendant, because a search party was closing in on the body's location at the same time. See *id.* at 435. Although the independent-source rule did not apply because the searchers did not actually find the body, they surely would have if the interrogation had not cut the search short. *Id.* at 449–50.

Nix thus imposes two related requirements: A court must (i) assess what would have happened "if no police error or misconduct had occurred" by (ii) asking whether the police would still have obtained the evidence "by means sufficiently distinguishable to be purged of the primary taint." See *id.* at 442–44; *Lauria*, 70 F.4th at 112, 122; *Haidle*, 285 P.3d at 677. The decision below violates both.

The "police error or misconduct" here was obtaining and relying on a facially defective warrant based on an

affidavit that nowhere tied the search to the suspect. Pet. App. 8a. But the Tenth Circuit did not ask what would have happened "if no misconduct had taken place." *Nix*, 467 U.S. at 444. It instead asked what would have happened if the investigators' behavior had been *the same*, but a third party (the magistrate) intervened before the constitutional violation was completed to explain their error. The court thus focused on the wrong actor at the wrong point in time. See *id.* at 442–44. And this framing stacks the deck, because the imagined intervention not only prevents the violation but also tells the government exactly how to secure the evidence lawfully through the same means. As a result, the court's rule excuses the government from having to show "that it certainly would have discovered the evidence by a lawful means *even if no warrant had been issued or challenged*." See *Lauria*, 70 F.4th at 124 (emphasis altered).

Likewise, the Tenth Circuit did not ask whether the government would have discovered the evidence independently of the misconduct. It simply imagined a scenario in which the misconduct was cured and the evidence was obtained in the exact same way. The court thus failed to analyze what would have happened "without reference to the police error or misconduct." *Nix*, 467 U.S. at 448. That is, instead of identifying an inevitable sequence of events leading to discovery that was untainted by the misconduct, the Tenth Circuit relied on a causal chain that *runs through and depends on* remedying the misconduct itself. The court thus violated the rule that "evidence is inadmissible unless the prosecution *severs the causal connection* by an affirmative showing that it would have acquired the evidence in any event." LaFave, *supra*, § 11.4(a) (emphasis altered). As in *Lauria*, "but for the defense's expo-

sure of [omissions] in the warrant affidavits, the government would have had no reason—and, therefore, would have been unlikely—to pursue alternative lawful means to procure the evidence at issue." 70 F.4th at 124.[1]

B. The decision below also "conflicts with the reasoning of *Leon*." Kerr, *supra*. *Leon* holds that suppression is not required where the police act "in objectively reasonable reliance on a subsequently invalidated search warrant." 468 U.S. at 922. In those cases, "[p]enalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations." *Id.* at 921. But this good-faith rule does not apply when the government uses "an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Id.* at 923 (cleaned up).

The Tenth Circuit's rule effectively abrogates *Leon*, allowing the government to use evidence obtained with even egregiously defective warrants so long as it hypothetically could have corrected the defects. Indeed, the "holding in *Streett* . . . matters *only* when the probable cause defect is egregious." Kerr, *supra* (emphasis added). In cases involving objectively reasonable mistakes, the decision below accomplishes nothing; *Leon* already ensures that police will not be penalized for reasonably relying on a later-invalidated warrant. But when probable cause is "so lacking" that a contrary belief is "entirely unreasonable"—indeed, even when government agents act in transparent bad

[1] The Tenth Circuit cited *United States* v. *Stabile* to support its approach (Pet. App. 10a), but the evidence at issue there had already been seized and would have been searched by police anyway while executing a *separate* and *valid* state warrant. 633 F.3d 219, 226–27 (3d Cir. 2011). *Stabile* thus offers no support for the Tenth Circuit's circular reasoning.

faith—the Tenth Circuit's rule would allow them to use the evidence even though *Leon* would not. The Tenth Circuit thus denies suppression even when that remedy is necessary under this Court's precedent to deter "culpable action" by the government. See *id.*

C. The Tenth Circuit's rule would in many cases vitiate the rule that "searches of private homes . . . generally must be conducted pursuant to a warrant in order to be reasonable under the Fourth Amendment," *Donovan* v. *Dewey*, 452 U.S. 594, 598 (1981), replacing it with a simple probable-cause inquiry.

The Tenth Circuit formally applied a four-factor inevitable-discovery test. Pet. App. 12a. But because it drew that test from cases that did not involve defective warrants, at least two of the factors will always "favor[ ] the Government" if the warrant process actually was "completed (albeit in defective fashion)." See *id.* at 13a.[2] The remaining factors are "the strength of probable cause" and whether the government "would have obtained a subsequent proper warrant if the deficient application originally had been denied"—but these factors collapse, too, because the latter depends entirely on the former. See *id.* at 13a–15a (emphasis omitted). If the government "already had" or could readily obtain the "more detailed" information needed "to establish probable cause," the Tenth Circuit's test is satisfied, and the government can use the unlawfully obtained evidence. *Id.* at 14a.

In turn, the only factor that truly matters is the strength of the government's probable-cause information—even if none of it actually reached the magis-

[2] Those factors are "the extent to which the warrant process ha[d] been completed" and whether the police "jumped the gun" by conducting a search instead of getting a warrant. Pet. App. 12a–15a.

trate and never would have. So long as the government can show it *could* have gotten a valid warrant if given a do-over and a how-to guide, the evidence will be admissible. On this view, "the existence of probable cause renders noncompliance with the warrant procedure an irrelevance"—a proposition this Court has rejected. See *Coolidge* v. *New Hampshire*, 403 U.S. 443, 450–51 (1971). "Probable cause must be found within the affidavit submitted in support of a search warrant, not in what the affidavit could have contained." *Haidle*, 285 P.3d at 678; see *Whiteley* v. *Warden*, 401 U.S. 560, 565 n.8 (1971) ("an otherwise insufficient affidavit cannot be rehabilitated" with information "not disclosed to the issuing magistrate"). The Tenth Circuit's contrary view "would emasculate the requirement for a search warrant under the Fourth Amendment." *Handtmann*, 437 N.W.2d at 838; see also LaFave, *supra*, § 11.4(a) (*Handtmann* illustrates the limits required to keep the doctrine from "nullify[ing] important Fourth Amendment safeguards").

At bottom, it is "essential that courts not lose sight of the fact that a mechanical application of the inevitable discovery doctrine will encourage unconstitutional shortcuts. . . . This is particularly apparent when the shortcut [is] a bypassing of the Fourth Amendment warrant requirement." LaFave, *supra*, § 11.4(a) (cleaned up). Thus, "[i]n carving out the 'inevitable discovery' exception to the taint doctrine, courts must use a surgeon's scalpel and not a meat axe." *Id.* The Tenth Circuit failed to heed that warning.

III. This question is important and recurring.

The question presented is vitally important. The Tenth Circuit's reasoning undermines the Fourth Amendment's warrant requirement by asking whether

the government *could* have gotten a valid warrant instead of whether it did or inevitably *would* have done so. It also allows the government to use evidence obtained even through egregious or culpable misconduct, and thus fails to deter lawbreaking by government agents. See Kerr, *supra*. "Because of the important Fourth Amendment implications of the decision below," review is warranted. See *Welsh* v. *Wisconsin*, 466 U.S. 740, 748 (1984).

This question is also recurring. State and federal officials execute countless search warrants every year, and any one of those cases could raise this question, as the decisions above illustrate.

IV. The case is an ideal vehicle.

This case is an ideal vehicle to address the question presented. No jurisdictional issues exist. The question was pressed and passed upon below. And the facts squarely present the question whether the inevitable-discovery doctrine allows the admission of evidence obtained in clear violation of the constitutional warrant requirements, based on a hypothetical world in which the magistrate noticed the warrant application's defect and told the government to correct it.

As both courts below agreed, the warrant was unconstitutional because it "did not establish probable cause because it failed explicitly to link Mr. Streett to the 4620 Plume residence." Pet. App. 8a, 197a. Yet the Tenth Circuit admitted the evidence discovered using that warrant based solely on the inevitable-discovery doctrine. See *id.* at 8a. The court of appeals thus declined to address the district court's alternative, good-faith rationale. *Id.* As a result, if the court of appeals misapplied the inevitable-discovery doctrine, the judgment below must be vacated. In any event, because

the warrant affidavit provided "no nexus" at all between Mr. Streett and the address to be searched, *id.* at 197a, it was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable," *Leon*, 468 U.S. at 923, making the good-faith exception inapplicable.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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