No. 24–6511

In the Supreme Court of the United States

IAN MITCHAM,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

On Petition for Writ of Certiorari to the Arizona Supreme Court

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court has jurisdiction under 28 U.S.C. § 1257(a) of a decision from an interlocutory appeal reversing the suppression of evidence in a pending criminal state court case, and, if so, is certiorari warranted where the asserted jurisdictional split has no bearing on the instant case.

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JURISDICTIONAL STATEMENT

Mitcham asserts this Court has jurisdiction to review this case under 28 U.S.C. § 1257(a). Petition for Writ of Certiorari ("Pet.") at 8. Mitcham, however, misleadingly states that "this case is on direct appeal." *Id*. at 28–29. It is not. Instead, Mitcham is seeking review of a state's interlocutory appeal regarding a suppression issue in a criminal case that is pending in state court. Moreover, Mitcham has not argued, let alone demonstrated, this case presents an exception to the rule that § 1257(a) does not provide jurisdiction over interlocutory appeals. This Court should therefore deny certiorari.

RELEVANT STATUTORY PROVISIONS

The statutory provision providing this Court's jurisdiction over state court decisions states:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 1257(a).

Relevant provisions of the Arizona statute requiring collection of a DNA sample upon a person's conviction in a felony case and a sentence of imprisonment:

> **A.** Within thirty days after a person is sentenced to the state department of corrections or a person who is accepted under the interstate compact for the supervision of parolees and probationers arrives in this state, the state department of corrections shall secure a sufficient sample of blood or other bodily substances for

> deoxyribonucleic acid testing and extraction from the person if the person was convicted of an offense listed in this section and was sentenced to a term of imprisonment or was convicted of any offense that was committed in another jurisdiction that if committed in this state would be a violation of any offense listed in this section and the person is under the supervision of the state department of corrections. The state department of corrections shall transmit the sample to the department of public safety.
>
> . . . .
>
> **G.** Notwithstanding subsections A through F, K, L and O of this section, the agency that is responsible for securing a sample pursuant to this section shall not secure the sample if the scientific criminal analysis section of the department of public safety has previously received and is maintaining a sample sufficient for deoxyribonucleic acid testing.
>
> . . . .
>
> **O.** This section applies to persons who are:
>
> 1. Convicted of any felony offense.

Ariz. Rev. Stat. Ann. § 13–610.

STATEMENT OF THE CASE

In February 2015, Allison Feldman was found murdered in her home in Scottsdale, Arizona. *State v. Mitcham*, 559 P.3d 1099, 1102, ¶¶ 3–5 (Ariz. 2024). Police generated a DNA profile from evidence gathered at the crime scene and entered it into the National DNA Index System ("NDIS") using the Combined DNA Index System ("CODIS"). *Id.* at 1102–03, ¶ 5. "'CODIS' is a software program maintained by the Federal Bureau of Investigation that links DNA profiles culled from federal, state, and territorial DNA collection programs, and searches the NDIS database of DNA profiles taken from convicted offenders, among others." *Id.* (cleaned up). The CODIS search did not produce a match. *Id.*

In 2017, law enforcement conducted a "familial DNA" search of the DNA profile generated from the crime-scene evidence and learned Mitcham's incarcerated brother was related to the DNA contributor within the first degree of consanguinity. *Id.* at 1103, ¶ 6. Mitcham and another brother lived in the Phoenix area, and the police focused their investigation on Mitcham. *Id.* at 1103, ¶¶ 6–7.

The police had blood samples from Mitcham's 2015 arrest for driving under the influence ("DUI"), and they used it to generate a DNA profile. *Id.* 1103, ¶ 7. In 2018, the police discovered that Mitcham's DNA profile matched the DNA profile that was left at the murder scene. *Id.* The officers obtained a search warrant to obtain a buccal swab from Mitcham, and the DNA profile created from the swab likewise matched the DNA profile found at the scene. *Id.* at 1103, ¶ 9. Shortly thereafter, Mitcham was indicted for first-degree murder, second-degree burglary, and sexual assault. *Id.*

Meanwhile, before the blood was analyzed in 2018, Mitcham faced felony charges unrelated to the murder. *Id.* at 1109, ¶ 38. Mitcham was charged with a felony narcotic offense in 2016, and two felony DUI offenses in 2017. *Id.* In 2022, while his murder case was pending, Mitcham pleaded guilty to the unrelated felony offenses and was sentenced to prison. *Id.* at 1109, ¶ 38. Arizona law requires prison officials to: (1) take a sample of blood or other bodily substance from any person convicted of a felony and sentenced to prison; and (2) transmit the sample to the Arizona Department of Public Safety to create a DNA profile to be entered into Arizona's DNA identification system and CODIS. *Id.* at 1109, ¶ 39; *see also* Ariz.

Rev. Stat. Ann. ("A.R.S.") § 13–610(A), (O). Prison officials, however, are prohibited from collecting a sample for DNA profiling if the prisoner's DNA profile has previously been entered into the DNA databases. *Mitcham*, 559 P.3d at 1109, ¶ 39; A.R.S. § 13–610(G). Because Mitcham's DNA profile was in the databases in 2018 as a result of the DNA profile from his DUI blood sample, no samples were collected to create a DNA profile after his 2022 convictions. *Mitcham*, 559 P.3d at 1110, ¶ 41.

After he pleaded guilty in his 2022 cases, Mitcham moved to suppress (1) the DNA evidence gathered from the blood vial taken during his 2015 DUI arrest; and (2) the DNA evidence from the buccal swabs collected pursuant to the subsequently obtained search warrant. *Id.* at 1103, ¶ 10. The trial court granted the motion, but stayed proceedings to allow the prosecution to exercise its statutory right to appeal an order suppressing evidence. *Id.*

The Arizona Court of Appeals reversed the trial court's order suppressing the DNA evidence, and the Arizona Supreme Court granted Mitcham's petition for review. *Id.* at 1103, ¶¶ 11–12.

The Arizona Supreme Court held that extracting defendant's DNA profile from blood collected during his prior arrest for a DUI charge was an impermissible "search" under the Fourth Amendment. *Id.* at 1104–08, ¶¶ 16–31. The court, however, concluded suppression of the evidence was not required because "the verifiable facts" demonstrated Mitcham's identity as Allison Feldman's killer would have been inevitably discovered since, absent the impermissible search, Mitcham's DNA would have been collected and submitted to the DNA databases as

the result of his unrelated convictions in 2022. *Id*. at 1109–12, ¶¶ 37–48. Thus, the Arizona Supreme Court reversed the trial court's suppression order and remanded the case for further proceedings. *Id*. at 1112, ¶ 48.

Mitcham's criminal case remains pending in the Maricopa County Superior Court.

SUMMARY OF ARGUMENT

Under 28 U.S.C. § 1257(a), this Court has jurisdiction to review "[f]inal judgments or decrees rendered by the highest court of a State" involving federal issues. For criminal prosecutions, a final judgment is one that results in a conviction and sentence. There is no final judgment here; instead, Mitcham's criminal case remains pending in state court. Moreover, Mitcham does not argue that any exceptions to the rule against review of interlocutory appeals applies, and, thus, this Court should deem any such arguments made for the first time in his reply brief waived. Waiver aside, none of the exceptions apply. Accordingly, this Court lacks jurisdiction and should deny certiorari for this reason alone.

Jurisdiction aside, this Court should also not grant certiorari because the Arizona Supreme Court correctly held the inevitable discovery doctrine applies. And this conclusion did not turn on whether officers were pursuing an independent line of investigation. Instead, the court held that the evidence should not be suppressed when the State conclusively proved that it would have obtained Mitcham's DNA profile from an independent source unrelated to the murder investigation. Mitcham was charged with unrelated felony offenses before the

search occurred in this case, and he was convicted of them in 2022. Under Arizona law, those convictions required Mitcham to submit a biological sample for DNA extraction to create a DNA profile to upload to Arizona's DNA database. A DNA profile from the homicide crime scene was already included within the DNA database. Upon running a required "autosearch" between known DNA profiles of convicted felons and unidentified DNA profiles obtained from crime scenes, law enforcement would have inevitably discovered and subsequently confirmed the match between Mitcham's DNA profile and the DNA profile from the crime scene in the homicide case. The purposes of the exclusionary rule are not served here when the police would have independently obtained Mitcham's DNA profile and discovered the match. Indeed, any contrary conclusion would put the State in a worse position than it would have been if the Fourth Amendment violation did not occur. Thus, this Court should also deny certiorari because the Arizona Supreme Court opinion is correct and does not turn on whether officers were actively pursuing an independent line of investigation.

REASONS FOR DENYING THE PETITION

I. This Court lacks jurisdiction because the interlocutory decision below is not a final judgment under 28 U.S.C. § 1257(a).

This Court's jurisdiction to review a state court decision is limited to review of "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." 28 U.S.C. § 1257(a). "Compliance with the provisions of § 1257 is an essential prerequisite to [this Court] deciding the merits of a case brought here under that section." *Johnson v. California*, 541 U.S. 428, 431 (2004)

(per curiam). For criminal prosecutions, "finality generally 'is defined by a judgment of conviction and the imposition of a sentence.'" *Florida v. Thomas*, 532 U.S. 774, 777 (2001) (quoting *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 54 (1989)).

The decision below does not satisfy § 1257(a)'s jurisdictional requirement; instead, Mitcham asks this Court to review a decision reversing a trial court's grant of a motion to suppress in a pending criminal case. *See Cogen v. United States*, 278 U.S. 221, 222, 227 (1929) (holding that order denying motion to return papers and suppress evidence obtained therein was not a "final judgment" but instead "a step in the criminal case preliminary to the trial thereof"); *see also Di Bella v. United States*, 369 U.S. 121, 123–24 (1962) (holding that the denial of a motion to suppress was not a "final decision" that was immediately appealable, and stating that the "insistence on finality and prohibition of piecemeal review discourage undue litigiousness and leaden-footed administration of justice, [which is] particularly damaging to the conduct of criminal cases").

Further, Mitcham has not argued that his case presents the type of limited circumstances where certiorari review may be obtained despite the absence of a final state judgment. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 477–87 (1975). Neither this Court nor Respondent should be required to wait until Mitcham's reply brief to learn what exception or exceptions he may assert apply. *See Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134, 140 n.2 (2014) ("We will not revive a forfeited argument simply because the petitioner gestures toward it in its reply brief."); *Melendez v. United States*, 518 U.S. 120, 125 n.2 (1996) (declining to

address the argument raised for the first time in reply brief); *see also Hill v. Kemp*, 478 F.3d 1236, 1251 (10th Cir. 2007) (stating that to allow a litigant to raise new arguments in a reply brief "would be manifestly unfair to" the opposing party who has "no opportunity for a written response"). Therefore, this Court should find any argument that jurisdiction exists here despite the lack of a final judgment waived. *See Johnson*, 541 U.S. at 432 (stating that Supreme Court Rules require a petitioner to establish "that the decision for which review is sought is indeed a "'[f]inal judgmen[t]' under § 1257'" to "avoid the expenditure of resources of both counsel and of this Court").

Waiver aside, the *Cox* exceptions are inapplicable.

Under *Cox*, there are four types of cases that may justify review under 28 U.S.C. § 1257(a) despite a final judgment: (1) cases where "the federal issue is conclusive or the outcome of further proceedings preordained"; (2) cases where "the federal issue, decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings"; (3) cases "where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case," and (4) certain cases where "a refusal immediately to review the state court decision might seriously erode federal policy." *Cox Broad. Corp.*, 420 U.S. at 479–83.

The first *Cox* exception does not apply because the federal issue presented is not "conclusive" of Mitcham's case and "the outcome of further proceedings [are not]

preordained." 420 U.S. at 479. Mitcham is charged with first-degree murder, second-degree burglary, and sexual assault. *Mitcham*, 559 P.3d at 1103, ¶ 9. That Mitcham's DNA was found at the crime scene does not conclusively establish these offenses; nor does it show that the outcome of his trial is preordained, despite the compelling nature of DNA evidence. *See People v. Dodson*, 771 N.E.2d 586, 588 n.1 (Ill. App. 2002) (citing the O.J. Simpson case as an example where a defendant was acquitted despite compelling evidence against him, including "seemingly irrefutable blood-exchange DNA matches").

Second, this is not a case where the federal issue "will survive and require decision regardless of the outcome of future state-court proceedings." *Cox Broad. Corp*., 420 U.S. at 480. Rather, the claim will be moot if Mitcham's case is resolved either by a plea or an acquittal. *See Padilla v. Kentucky*, 559 U.S. 356, 372 (2010) (noting "[p]leas account for nearly 95% of all criminal convictions"); *see also Jefferson v. City of Tarrant, Ala.*, 522 U.S. 75, 82 (1997) (rejecting argument that the issue presented met the second *Cox* exception where the claim would be moot if the defendant prevailed in state court).

Third, this is not a case where a federal claim has been decided, "with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case." *Cox Broad. Corp*. 420 U.S. at 481. Even assuming Mitcham is convicted at trial and his convictions are sustained on appeal, he will be "free to seek [this Court's] review once the state-court litigation comes to an end." *Jefferson*, 522 U.S. at 82–83.

Cox's fourth exception is also inapplicable. Under this last exception, a petitioner must show that the federal issue presented "has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court," and that "reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceedings still to come." 420 U.S. at 482–83. Here, even though the federal issue presented has been finally decided in state court, and even though Mitcham might prevail on nonfederal grounds at trial, this Court's reversal on the federal issue would not "be preclusive of any further litigation" in Mitcham's pending criminal case; instead, it would merely concern "the admissibility of evidence" in the pending criminal trial. *Id.* at 482–83.

More importantly, the fourth *Cox* exception only applies "if a refusal immediately to review the state court decision might seriously erode federal policy." *Id*. at 483.

There is no colorable argument that declination of review here would "seriously erode federal policy." This is a pending criminal case in state court and the resolution of the federal issue presented can "await final judgment without any adverse effect upon important federal interests." *Flynt v. Ohio*, 451 U.S. 619, 622 (1981) (stating that allowing review of issues decided on an interlocutory appeal in

state criminal cases to qualify for immediate certiorari review under *Cox*'s fourth exception would "swallow the rule"); *see Johnson*, 541 U.S. at 430 (dismissing case as improvidently granted where the petitioner could "make no convincing claim of erosion of federal policy that is not common to all decisions rejecting a defendant's *Batson*[1] claim"); *Thomas*, 532 U.S. at 780 (finding the fourth *Cox* exception inapplicable where there was "no claim of serious erosion of federal policy that is not common to all run-of-the-mine decisions suppressing evidence in criminal trials").

Consequently, because Mitcham has not established that he is seeking review from a final judgment under 28 U.S.C. § 1257(a), this Court should deny certiorari.

II. Jurisdiction aside, the Arizona Supreme Court correctly refused to suppress the evidence because police would have inevitably obtained Mitcham's DNA profile from an independent source.

Contrary to Mitcham's argument, this case does not revolve around whether there was active pursuit of an independent investigation. Under any of the iterations of the inevitable discovery doctrine discussed by Mitcham and under the established precedent of this Court, the exclusionary rule does not apply. It is undisputed that Mitcham had unrelated felony criminal charges pending *before* the search held unlawful by the Arizona Supreme Court occurred. The convictions on these unrelated charges would have permitted the State to obtain Mitcham's DNA profile and would have inevitably led to the discovery of the match to the suspect's

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[1] *See Batson v. Kentucky*, 476 U.S. 79 (1986).

DNA profile from the murder crime scene. The Arizona Supreme Court's application of the doctrine was based not on speculation but rather on "demonstrated historical facts capable of ready verification." *Nix v. Williams*, 467 U.S. 431, 444 n.5 (1984).

A. Basic principles of the inevitable discovery and independent source doctrines.

This Court has long applied the inevitable discovery and independent source exceptions to the exclusionary rule. "[T]he independent source doctrine allows trial courts to admit evidence obtained in an unlawful search if officers independently acquired it from a separate, independent source." *Utah v. Strieff*, 579 U.S. 232, 238 (2016). "[T]he inevitable discovery doctrine allows for the admission of evidence that would have been discovered even without the unconstitutional source." *Id.* The inevitable discovery doctrine "is in reality an extrapolation from the independent source doctrine: *Since* the tainted evidence would be admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered." *Murray v. United States*, 487 U.S. 533, 539 (1988) (emphasis in original).

Both doctrines arise from the same rationale that the deterrence benefits of the exclusionary rule must outweigh the substantial cost of suppressing the evidence. *Strieff*, 579 U.S. at 237–38. Indeed, this Court suppresses evidence as a "last resort, not [on] first impulse." *Id.* Although "the government should not profit from its illegal activity, neither should it be placed in a worse position than it would otherwise have occupied." *Murray*, 487 U.S. at 542. Rather, the "[e]xclusion of physical evidence that would inevitably have been discovered adds nothing to either

the integrity or fairness of a criminal trial .... but would inflict a wholly unacceptable burden on the administration of criminal justice." *Williams*, 467 U.S at 446–47.

B. The inevitable discovery doctrine applies.

As the Arizona Supreme Court held, "the verifiable facts demonstrate inevitable discovery of Mitcham's DNA profile." *Mitcham*, 559 P.3d at 1109, ¶ 38. It is undisputed that Mitcham was charged and convicted of felony offenses unrelated to the murder and sentenced to a term of imprisonment in the Arizona Department of Corrections, Rehabilitation and Reentry (the new name of the state department of corrections). *Id.* at 1109, ¶¶ 38–39 & n.2. Arizona law provides that "[w]ithin thirty days after a person is sentenced to the state department of corrections ... the state department of corrections *shall* secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of an offense listed in this section[.]" A.R.S. § 13–610(A) (emphasis added.) That sample is then transmitted to the Arizona Department of Public Safety ("DPS"). A.R.S. § 13–610(A). This statute applies to any person "[c]onvicted of any felony offense." A.R.S. § 13–610(O)(1); *see also Maryland v. King*, 569 U.S 435, 445 (2013) ("All 50 States require the collection of DNA from felony convicts[.]").

Because A.R.S. § 13–610(G) prohibits double collection of DNA samples, a sample of Mitcham's DNA was not taken as a result of his 2022 convictions. *Mitcham*, 559 P.3d at 1110, ¶ 41. Nonetheless, absent the inclusion of the DNA

profile as a result of Mitcham's misdemeanor driving-under-the-influence arrest, this would have inevitably occurred. *Id.*; *see also* A.R.S. §§ 13–610(A), (G), & (O).

Scottsdale Police Department had developed an unknown male DNA profile from the murder investigation crime scene, which was uploaded to CODIS. *Mitcham*, 559 P.3d at 1102, ¶ 5. As detailed in the DPS *CODIS Procedures Manual* (provided in state court briefing), the State DNA Index System is "autosearched" "not less than once a week" to determine, in relevant part, whether there is a match between convicted offenders and profiles from a crime scene. Arizona Court of Appeals Opening Brief Appendix C (hereafter, "Opening Brief, Appendix C"), at § 6.1.3.[2] If, as here, there is an "intrastate offender match"—meaning "a DNA profile developed from crime scene evidence by a casework laboratory matches an offender's DNA profile developed by a database laboratory within the same state"—several procedures are followed to confirm the match including obtaining a new biological sample from the offender. *Id.* at § 7.1.1.

Thus, if police had not extracted Mitcham's DNA profile from the blood drawn as part of the 2015 DUI investigation, his DNA profile would have inevitably been extracted and put in CODIS from an independent source and then searched through CODIS. *Mitcham*, 559 P.3d at 1109–10, ¶¶ 37–40. This is because, as previously noted, Arizona law requires convicted felons sentenced to a term of

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[2] This manual is also publicly available on the Arizona Department of Public Safety's website at https://azdps.qualtraxcloud.com/showdocument.aspx?ID=3369 (last visited March 25, 2025).

imprisonment in the department of corrections to provide a biological sample for DNA testing and extraction. *Id.* The only reason this mandatory process did not occur in this case is because Mitcham's profile had previously been received by DPS. *Id.* And, not only would Mitcham's DNA profile have been created and added to CODIS, it would have been subject to the autosearches of the State DNA Index System. Opening Brief, Appendix C, at § 6.1.3. There inevitably would have been a match between Mitcham's DNA profile and the DNA profile developed from the crime scene evidence that was already contained in the CODIS database. To confirm the match, police would have obtained a buccal swab from Mitcham pursuant to standard procedures. *Id.* at § 7.1.1.

The fact that Mitcham's DNA sample was not taken again upon conviction is the difference between the inevitable discovery and independent source doctrines in this case. If a new sample had been taken from Mitcham and a new DNA profile created, then the independent source doctrine would apply. *See Strieff*, 579 U.S. at 238; *Murray*, 487 U.S. at 539. But because there was no need to develop a new DNA profile when Mitcham's DNA profile had already been determined, the argument is better characterized under the inevitable discovery doctrine. *See Murray*, 487 U.S. at 539 (describing the inevitable discovery doctrine as an "extrapolation from the independent source doctrine"). Regardless, these doctrines are "closely related," *see Williams*, 467 U.S. at 443, and the same arguments apply even if this Court were to find it better characterized under the independent source doctrine.

C. To the extent a split exists, resolving it would not affect the outcome in this case.

Admittedly, the Arizona Supreme Court addressed Mitcham's argument about whether active pursuit is necessary for the inevitable discovery doctrine to apply. *Mitcham*, 559 P.3d at 1110–12, ¶¶ 42–46. But that discussion was not necessary for its holding. Instead, the key fact is that the unrelated felony charges were pending *before* the search deemed unlawful occurred here. *Id.* at 1109, ¶ 38. The relevant date is not the date Mitcham pled guilty but instead when the felony cases were charged. These pending charges were independent of the murder case and resolved even before the suppression hearing took place in the murder case. *Id.* The active pursuit argument really pertained to the State's alternative argument of inevitable discovery that was not adopted by the Arizona Supreme Court.

In the trial court below, the State made two inevitable discovery arguments: (1) the State would have inevitably discovered Mitcham's DNA because he was a suspect as a result of the familial match in 2018 and the State would have used another method to obtain his DNA; and (2) the State would have inevitably obtained his DNA through the unrelated felony convictions. *See* Pet. App. at 4a (trial court order discussing State's inevitable discovery arguments). The trial court rejected both arguments. *Id.* at 4a–6a.

In the Arizona Court of Appeals, the State presented both arguments and that court found the inevitable discovery doctrine applied for two reasons: (1) the State had probable cause to arrest Mitcham without the tainted evidence and would have obtained a DNA sample upon arrest, and (2) the State would have inevitably

obtained the DNA evidence through the unrelated felony convictions. *State v. Mitcham*, 535 P.3d 948, 958–59, ¶¶ 39–51 (Ariz. App. 2023). The Arizona Supreme Court vacated the court of appeals' opinion and concluded inevitable discovery applied based only on the unrelated felony convictions. *Mitcham*, 559 P.3d at 1109–12, ¶¶ 37–48.

The basis of the inevitable discovery argument here does not turn on facts similar to *Nix*, where there was an independent search occurring in the same murder case that would have inevitably discovered the same evidence. *See Williams*, 467 U.S. at 449–50 ("On this record it is clear that the search parties were approaching the actual location of the body, and we are satisfied, along with three courts earlier, that the volunteer search teams would have resumed the search had [the defendant] not earlier led the police to the body and the body inevitably would have been found."). Instead, the basis of the inevitable discovery argument here is even further independent from the murder investigation. It is based on the fact that entirely separate criminal proceedings—which began *before* the familial search occurred and the search found to be unlawful by the Arizona Supreme Court—would have inevitably led to the same result.

Finally, although the State agrees with the Arizona Supreme Court's view of the inevitable discovery doctrine and that active pursuit is not required, even under the cases that Mitcham asserts have a narrower view, the inevitable discovery doctrine would apply. *See, e.g.*, *United States v. Eng*, 971 F.2d 854, 862 (2d Cir. 1992) (stating that to apply the inevitable discovery exception, a court must

"determine what *would have happened* had the government misconduct never occurred, in light of what the government knew and was pursuing at the moment before the unlawful search, and other relevant facts and circumstances") (emphasis in original); *United States v. Satterfield*, 743 F2d 827, 846 (11th Cir. 1984) ("[A]t the time the Government violated [defendant]'s fourth amendment right, it did not possess the legal means that would have led to the discovery of the shotgun."), *superseded by statute on other grounds as recognized in United States v. Edwards*, 728 F.3d 1286, 1292 & n.2 (11th Cir. 2013).

Resolving the split, thus, would not matter to the outcome in this case. *See United States v. Jackson*, 596 F.3d 236, 242 (5th Cir. 2010) (refusing to "address the continuing vitality of the active-pursuit element [of the inevitable discovery doctrine]," when the doctrine applied based on an "ongoing grand jury investigation"); *United States v. Lamas*, 930 F.2d 1099, 1104 (5th Cir. 1991) ("Whether this active-pursuit element … is still *necessary* to implicate the inevitable-discovery rule must await the case that turns on that question.") (emphasis in original).

It is of no moment that Mitcham's guilty plea to the unrelated charges occurred after the illegal search occurred in this case—these cases were charged *before* the unlawful search and, thus, can no way be deemed to be a result of the unlawful search. This Court's stated purpose behind the inevitable discovery doctrine directly applies here because "exclusion of such evidence would put in the

police in a worse position than they would have been in absent any error or violation." *Williams*, 467 U.S. at 443.

In sum, even if this Court had jurisdiction, it should still deny certiorari because the Arizona Supreme Court correctly applied the inevitable discovery doctrine under this Court's precedent and resolving the split of authority is unnecessary in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted this 26th day of March, 2025.

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