NO.___

IN THE

SUPREME COURT OF THE UNITED STATES

CHARLES DITTO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the

United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Amy Karlin
Interim Federal Public Defender

Chad J. Pennington,
Lead Counsel of Record
Deputy Federal Public Defender
Office of the Federal Public Defender
Central District of California
321 E. 2nd Street
Los Angeles, CA 90012
Phone: 213.894.2854
Chad_Pennington@fd.org

Counsel for Petitioner

QUESTION PRESENTED

Whether lower courts may apply a "reasonable probability" standard in evaluating the inevitable discovery exception to the exclusionary rule? The lower courts' use of a "reasonable probability" standard in the inevitable discovery context has eroded this Court's holding and its core exclusionary rule rationale in *Nix v. Williams*, 467 U.S. 431 (1984).

LIST OF PARTIES

The only parties to the proceeding are those appearing in the caption to this petition. Specifically, the Petitioner before this Court is Charles Ditto. Mr. Ditto was the District Court Defendant and Circuit Court Appellant. The Respondent before this Court is the United States. The United States was the District Court Criminal Plaintiff and Circuit Court Appellee. There are no further or additional parties before this Court.

RELATED PROCEEDINGS

United States v. Ditto, 2:23-cr-00376-SB-1, United States District Court for the Central District of California. Order denying suppression of the evidence under the Fourth Amendment and applying the inevitable discovery exception to the exclusionary rule, entered on March 5, 2024.

United States v. Ditto, Appeal No. 24-7191, United States Court of Appeals for the Ninth Circuit. Memorandum disposition affirming the district court's suppression motion denial, entered on March 12, 2026.

United States v. Ditto, Appeal No. 24-7191, United States Court of Appeals for the Ninth Circuit. Order denying Mr. Ditto's timely request for panel hearing, entered on April 6, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Charles Ditto respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit's memorandum disposition affirming the district court's suppression motion order and order denying panel rehearing.

OPINIONS BELOW

The memorandum disposition and denial of panel rehearing of the court of appeals (App. pp. 1a-3a) are unreported. The district court's suppression motion order (App. pp. 4a-11a) is unreported.

JURISDICTION

On March 12, 2026, the court of appeals entered a memorandum disposition affirming the district court's denial of Mr. Ditto's suppression motion. App. pp. 2a-3a. On April 6, 2026, the court of appeals entered an order denying Mr. Ditto's request for panel rehearing (order on review). App. p. 1a. This petition, accordingly, is timely under Supreme Court Rule 13.3. This Court exercises jurisdiction under 28 U.S.C. § 1254(1) and 18 U.S.C. § 3145(b).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution 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

The exclusionary rule has substantial social costs; but so too are the social costs great when law enforcement obtains inculpatory trial evidence against a person in violation of core constitutional protections. Among those social costs, is the damage done to the people's justifiable belief and expectation that their constitutional rights are respected by law enforcement and the judiciary, and that any loss of constitutional protection will be based on articulable, demonstrable facts, rather than on law enforcement's *post hoc* speculation.

This petition presents an important question regarding an exclusionary rule exception, the inevitable discovery doctrine. That question is whether inevitable discovery requires that the contested evidence would have inevitably been discovered by lawful means or, as the circuit court concluded in this case, whether a mere "reasonable probability" of lawful discovery satisfies the exception? Stated differently, whether the doctrine requires inevitability (high certainty or would have been) of lawful discovery and applying this Court's rationale in *Nix*, or whether the lower courts' creation of a lesser "reasonable probability" (mid certainty or could have been) of lawful discovery warrants the admission of evidence. A corollary, whether the lower courts' adoption of a "reasonable probability standard" is a constitutionally tolerable exclusionary rule exception?

This Court has only once directly addressed the inevitable discovery doctrine in *Nix v. Williams*, 467 U.S. 431 (1984). In *Nix*, this Court established two central inevitable discovery requirements, a baseline requirement of inevitability and an evidentiary burden that the prosecution must prove by a preponderance of the evidence that law enforcement would have discovered the evidence without the violation. 467 U.S. at 448.

Analytically, as a constitutional doctrine, inevitable discovery functions more like the independent source doctrine in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920), than the attenuation doctrine in cases such as *Utah v. Streiff*, 579 U.S. 232, 235 (2016). Meaning, unlike in attenuation, there is no purging of the constitutional violation or dissipation of the constitutional taint in an inevitable discovery analysis. The issue under inevitable discovery, rather, is whether the government proves the contested evidence would have been discovered through means other than through the constitutional error. Inevitable discovery fits within this Court's exclusionary rule rationale, because the separate and legitimate basis of discovering the contested evidence leaves the government in no worse position than it would be through the police misconduct.

Since, *Nix*, however, some lower courts have diminished this Court's requirement that only inevitably lawfully discovered evidence will be admitted under the doctrine at trial and replaced it with a "reasonable probability" standard. This confusion among the lower courts and diminution of the doctrine's inevitably requirement requires this Court's correction. For example, the Fifth Circuit Court of Appeals' inevitable discovery test requires that the prosecution "demonstrate[] by a preponderance of the evidence that (1) there is a reasonable probability that the contested evidence would have been discovered by lawful means . . . ." *United States* *v. Jackson*, 596 F.3d 236, 241 (5th Cir. 2010). The Eighth Circuit Court of Appeals has included the same language in its inevitable discovery test, requiring only a "reasonable probability" of lawful discovery. *United States v. McManaman*, 673 F.3d 841, 846 (8th Cir. 2012) (circuit court holding "that this inevitable discovery exception applies when the government proves 'by a preponderance of the evidence: (1) that there was a reasonable probability that the evidence would have been discovered by lawful means in the absence of police misconduct . . . .'" (quoting *United States v. Conner*, 127 F.3d 663, 667 (8th Cir. 1997)). The lower courts supplanting of "inevitably" with "reasonable probability," has introduced a different test than this Court established in *Nix*. This Court's intervention is needed to correct the doctrine's namesake and inevitability principle.

The tension between inevitability and the lower courts' "reasonable probability" mutation was evident in Mr. Ditto's direct appeal. Faithful to *Nix*, the Ninth Circuit Court of Appeals had recently held that for inevitable discovery to allow for the admission of trial evidence, "[i]nevitability is the key. There can be 'no speculative elements' in showing that law enforcement would have obtained the evidence lawfully absent its unlawful actions." *United States v. Holmes*, 121 F.4th 727, 737 (9th Cir. 2024) (quoting *Nix* 467 U.S. at 444 n.5). "Rather, this inquiry must 'focus[ ] on demonstrated historical facts capable of ready verification or impeachment.'" *Id.* (quoting *Nix*, 467 U.S. at 444 n.5). However, the Ninth Circuit Court of Appeals panel here applied a "reasonable probability of discovery standard." App. p. 3a (quoting *United States v. Lang*, 149 F.3d 1044, 1047 (9th Cir.

1998), *amended*, 157 F.3d 1161 (9th Cir. 1998) (citing *United States v. Drosten*, 819 F.2d 1067, 1070 (11th Cir. 1987)). The Ninth Circuit Court of Appeals' differing intra-doctrinal approaches to the "inevitability" versus "reasonable probability" standard demonstrates why this Court should accept Mr. Ditto's petition.

In addition, in *Nix*, the finding of inevitable discovery applied because the record had been developed through the lower courts, which allowed this Court to conclude the lower courts accurately found the prosecution had satisfied its inevitability burden. 467 U.S. at 448. For example, in *Nix*, the Iowa state trial court held an evidentiary hearing and heard officer testimony on defendant's suppression motion, and the federal trial court entertained deposition testimony of the involved officers in a *habeas* proceeding. *Id.* at 449-450. In *Nix*, two separate lower courts reviewed the facts, developed evidence, entertained testimony, and found the agents' testimony credible regarding inevitability. *See id.* at 450 n.6. Those evidentiary hearings and the concomitant testimonial record made their way through appellate review. In *Nix*, the lower courts developed a record demonstrating the government proved the evidence *would have been* admitted without any reference to the constitutional error, and this Court was thus in a position to articulate the inevitable discovery standard.[1] Though there is no bad faith analysis in inevitable discovery, from as early as *Nix*, officer credibility has been crucial in determining the inevitability chronology and to establish that there

[1] In *Nix*, the law enforcement error was the deliberate elicitation of the defendant's statement in violation of the Sixth Amendment and *Massiah v. United States*, 377 U.S. 201 (1964).

was no nexus with, or reference to, the constitutional violation in the ultimate discovery.

The "reasonable probability" standard has allowed the government to make inevitable discovery showings without the requisite forms and volume of evidence. In this case, there were two searches of Mr. Ditto's car. The first search, searched both the passenger compartment and the trunk; the second search, searched the car's trunk only. Mr. Ditto argued the first search was a constitutional violation. The district court declined to decide the constitutionality of the first search and instead concluded the second search of the trunk was inevitable. But, the district court did not hold an evidentiary hearing, though Mr. Ditto had requested a hearing. Thus, the district court did not permit even a basic departmental policy to be admitted, or testimony adduced on standard department operating procedures regarding searches. Moreover, the hearing transcript shows there were obvious and known factual and chronological gaps attending the two searches.

Without an evidentiary hearing here, the record does not show whether officers followed routine procedures separate from the constitutional violation at issue. To that end, the district court entertained no testimony demonstrating the constitutionality of the first car search, nor whether the second car search was inevitable. Furthermore, the district court did not hold the government to its burden to establish whether the second search lacked any reference or nexus to the first and constitutionally defective car search.

The lower courts' adoption of a "reasonable probability" standard invites the type of minimal record, low evidence production, and law enforcement and judicial speculation evident in Mr. Ditto's proceeding. Accepting this petition would allow this Court to clarify that the "reasonable probability" standard may not be used by a lower court in an inevitable discovery analysis. And by doing so, this Court would be providing needed guidance to the lower courts on the proper procedure and the type and quantum evidence to be admitted in Fourth Amendment suppression motion hearings in which the government argues inevitable discovery should be applied as an exclusionary rule exception. This Court decided *Nix* in 1984, further inevitable discovery guidance is needed to prevent lower courts from ruling from underdeveloped evidentiary records, such as here, in favor of speculation without strong evidentiary support. This Court's holding in *Nix* demanded inevitability from the presented record, not speculation and judicial factual gap filling. This Court's holding in *Nix* demanded a prosecutorial showing of what *would have* happened without reference to the constitutional violation, this Court's correction is needed because the lower courts have applied a what *could have* happened standard.

STATEMENT OF THE CASE

This petition stems from the Los Angeles Police Department's May 11, 2022, searches of Mr. Ditto's car and person.[2] That day, law enforcement conducted two separate searches of Mr. Ditto's car. App. p. 4a-5a. That day, at around 9:55 a.m.,

[2] Law enforcement conducted separate searches of Mr. Ditto's home, however, those searches are not central to the instant petition. App. p. 4a.

Los Angeles Police Department responded to a 911-call regarding an apparent domestic situation with an unknown woman screaming. App. p. 4a. Four Los Angeles Police Officers initially arrived on-scene at an area motel: Officers Garcia, Castillo, Lopez, and Perez. *See id.* The officers were grouped in pairs; Officers Garcia and Castillo one pair, and Officers Lopez and Perez the other pair.

Mr. Ditto was approached while parked outside of the motel by Officer Garcia regarding the 911 call. App. pp. 4a-5a. During questioning by Officer Garcia, Officer Garcia determined that Mr. Ditto had an active arrest warrant issued by state authorities. App. p. 5a. Based on that warrant, Officers Lopez and Perez searched Mr. Ditto and found a quantity of controlled substances and slightly over $1,000 cash in his pockets. *See id. Separately*, Officers Garcia and Castillo searched Mr. Ditto's car and then searched Mr. Ditto's car trunk, finding ammunition. *See id.* Approximately an hour and a half later, Los Angeles Police conducted a second search of Mr. Ditto's car trunk, allegedly, finding a larger quantity of controlled substances in the trunk. App. p. 6a. The record is not clear on whether the search of Mr. Ditto's person by Officers Lopez and Perez began *before* the search of his car by Officers Garcia and Castillo.

The district court noted early in the hearing, that in its view, inevitable discovery provided the "path most obvious and of least resistance" to denying Mr. Ditto's suppression motion. App. p. 25a. The district court further started that in "every Fourth Amendment case -- that is, whenever there's a Fourth Amendment challenge" a reviewing court must engage "in a very careful analysis of chronology because chronology really matters." App. p. 22a. The district court noted that it could not "determine from the record what the chronology was with respect to the discovery of the items on Mr. Ditto's person and the search and the discovery of the vehicle other than what [it] could ascertain from the video footage and the video has certain limitations because [the court cannot] see at all times what's happening here." App. p. 23a. Government counsel agreed that the record was not clear as to sequencing, stating that "[b]ased on the videos submitted to the Court, [it] cannot decisively tell the Court whether [the] [search of Mr. Ditto's person or of his car] happened before the other." App. p. 24a. The district court noted that the government "would have access to the witnesses. They could tell potentially or maybe they could you they don't know. They weren't paying attention, but there is another source, not just video." *Id.*

The lack of chronological clarity was evident throughout the suppression motion hearing. The district court asked the government whether the "record give[s] [it] the answer to the" search chronology question, to which the government acknowledged the record was not clear. App. p. 23a

> THE COURT: Don't you think if the officers found the drugs on [Mr. Ditto's] person as well as the cash *before* they opened the car door? For Fourth Amendment purposes, it may not be dispositive because there are exceptions to the exclusionary rule but that's of some fairly substantial significance; isn't it?
>
> GOVERNMENT COUNSEL: *Certainly, Your Honor*, there is adequate and sufficient case law indicating that if an officer in a hypothetical situation discovers drugs in someone's pocket that they could then develop reasonable suspicion [or] probable cause to then proceed to search the vehicle. There are certainly cases and hypotheticals that I've dealt with that situation.

> THE COURT: *And, . . . do I know from this record whether the drugs on [Mr. Ditto's] person and the cash were found before the officers actually **opened** the door of the vehicle [to start the car search]*?
>
> GOVERNMENT COUNSEL: Based on the videos submitted to the Court, *I cannot decisively tell the Court whether one happened before the other*.
>
> THE COURT: *But you do have access to the witnesses.* They could tell potentially or maybe they could tell you they don't know. They weren't paying attention but there is another source, not just video.
>
> GOVERNMENT COUNSEL: *That is true, Your Honor, yes*.
>
> THE COURT: And there's nothing in the record at all that gives *me any clue to the sequence*. And if I miss something, that's the purpose of the very pointed questions. I'd like to find out if I missed something.
>
> GOVERNMENT COUNSEL: No, understandable. And these are questions that the Government considered as well[.] *In the Government's opposition, the Government doesn't focus on this precise sequence of whether the drugs were found first on the person of the Defendant before **the car door was opened***. And my apologies, Your Honor, for not clarifying that in the Government's opposition but that was not the focus of the points within the Government's opposition.

App. pp. 23a-24a (emphasis added).

Nonetheless, as noted above, the district court did not conduct an evidentiary hearing. App. p. 4a.

The same day, March 5, 2024, the district court issued a final ruling, denying Mr. Ditto's suppression motion. The district court recognized that Officers Garcia and Castillo conducted the initial search of Mr. Ditto's car without a warrant, and that search was thus presumptively unreasonable. App. p. 7a. The district court further acknowledged that there may be another factual dispute regarding a purple rocklike object in the center console of Mr. Ditto's car and whether there was a possible residue containing contraband on a digital scale found in his car. *See id.*

The district court nonetheless found that the factual disputes immaterial because "the record is clear that even if the initial search was unlawful, the challenged evidence inevitably would have been discovered following the search of Mr. Ditto incident to his arrest---which only moments later, revealed drug contraband that gave rise to probable cause to search the car, including the trunk." App. pp. 7a-8a. In effect, the district court concluded that the search of Mr. Ditto's person justified the *later* search of his car, including the trunk, that occurred *after* Officers Garcia and Castillo had presumably illegally searched the car.

The district court found that the initial search of Mr. Ditto by Officers Lopez and Perez was a valid search-incident to arrest because at the time of the search of his person it was known 1) Mr. Ditto matched the description of the male identified on a call concerning a domestic violence incident; 2) Mr. Ditto was sitting in his car, parked in front of the motel room where the incident reportedly had occurred; 3) Mr. Ditto had an outstanding warrant; 4) Mr. Ditto was prohibited from possessing ammunition; 5) Mr. Ditto unlawfully possessed ammunition a few weeks earlier according to the warrant; and 6) Mr. Ditto was visiting a motel located in a purported high-crime area known to officers for its history of drug deals. App. p. 8a. And, upon completing the search, Officers found that 1) Mr. Ditto had $1,120.00 in his clothing pocket; 2) had roughly 5 grams of suspected cocaine in his front right pocket; 3) and had roughly 17.1 grams of suspected fentanyl in his front right pocket. App. p. 9a. The district court concluded the combined facts gave the officers who searched Mr. Ditto "probable cause to arrest Ditto for possession of drugs for sale upon lawfully searching him. These same facts also gave rise to probable cause to search Ditto's car for illegal drugs or other evidence of drug dealing. . . . Thus, the evidence found in the car inevitably would have been lawfully discovered." *Id.*

The district court further found that the evidence found on Mr. Ditto's person "would have allowed the officers, under the [*Arizona v. Gant*, 556 U.S. 332, 343-44 (2009)] exception, to search the passenger compartment for evidence of drug possession or distribution." ER-9. The district court further found that an officer effectuating a *Gant*-type search "would have discovered even more evidence of drug trafficking in the passenger compartment, including" 1) a taser; 2) a scale; and 3) a bag containing $3,063 in cash. App. pp. 9a-10a.

The district court found that:

> [A]ssuming that the car search was unreasonable at the time it was initiated . . . , it would have been lawful moments later after the lawful search of Ditto's person . . ., and would have ultimately revealed additional facts providing even stronger suspicion of drug trafficking . . . . Put another way, even if Officers Garcia and Castillo could not have lawfully conducted the search based on the information known to them at the time, Officers Lopez and Perez could have done so—and the car would have been searched even without Officers Garcia and Castillo's head start. . . . It is implausible that reasonable officers . . . would not have searched Ditto's car after recovering fentanyl, cocaine, and cash on Ditto's person.

App. p. 10a.

The district court further found that "[a] reasonable officer viewing [the facts of the case could make a] commonsense decision that there was a fair probability that the trunk contained evidence of criminal activity—that is, they would have had probable cause to search it." *Id.*

On March 12, 2026, the Ninth Circuit Court of Appeals affirmed the district court. App. pp. 2a-3a. It concluded that the district court did not clearly err "by finding that evidence from [Mr.] Ditto's car was admissible under the inevitable discovery doctrine." App. pp. 2a-3a (citing *Holmes*, 121 F.4th at 734). The Court further found that it was "not illogical, implausible, or without support in inferences that may be drawn from the record for the district court to find that there was 'a reasonable probability' of discovery." App. p. 3a. (quoting *Lang*, 149 F.3d at 1047 (amended at 157 F.3d 1161)). On April 6, 2026, the Ninth Circuit Court of Appeals denied Mr. Ditto's request for panel rehearing. App. p. 1a.

REASONS FOR GRANTING THE PETITION

This case involves an important question of federal law that should be settled by this Court— whether a lower court may not apply a "reasonable probability" standard within the inevitable discovery context. The exclusionary rule protects critical constitutional interests during a criminal proceeding. This Court held in *Nix* that the inevitable discovery exception applies only to evidence that would have been obtained through lawful means independent of the constitutional violation. This petition allows this Court to correct the lower courts' flawed application of exception attending "reasonable probability." Also, granting Mr. Ditto's petition will address and clarify both the circuit split on the "reasonable probability" standard and prevent circuit courts from internally applying both an inevitability standard and "reasonable probability" standard, such as the case here.

Furthermore, review is critical to prevent what occurred here: the district court's speculative and internally inconsistent findings regarding inevitability. The district court relied on inevitable discovery, but engaged in prohibited speculation as to officer reasonableness and plausibility. The district court plainly guessed what officers could likely do, and guessed as to what a reasonable officer would do. An evidentiary hearing and concomitant law enforcement testimony was needed to establish what, if any, were the search procedures in place and the degree to which searching officers exercised discretion. In effect, an evidentiary hearing was needed to establish *what would have happened*. Without that critical direct evidence, the district court used likelihood as a proxy for inevitability. Indeed, the district court impermissibly based its ruling on what it speculated a reasonable officer may do under the presented circumstances. The district court acknowledged the manifold gaps in the evidentiary record, but the circuit court's application of the "reasonable probability" standard lowered what should have been a more exacting appellate standard of review. The lack of guidance after *Nix* has enabled lower courts, such as here, to expand inevitable discovery into a significant exception that undermines constitutional protections against unreasonable searches and seizures.

I. This case allows this Court to clarify inevitable discovery.

Lower courts have developed a variety of tests for inevitable discovery. This has led to doctrinal inconsistency and, in some circuits, a weakening of this Court's original dictates in *Nix.* Crucially, the government carries the burden to establish that the inevitable discovery exception applies, fidelity to the *Nix* standard by the lower courts is critical to ensure only evidence that inevitably would have been obtained is admitted. Indeed, it is axiomatic that an evidentiary gap should not redound to the benefit of the party carrying the evidentiary burden. A clarification of the doctrine is needed to prevent judicial speculation and factual gap filling, as occurred here.

The government introduced no evidence against Mr. Ditto at the suppression hearing regarding what an officer would do here, the district court was, therefore, not permitted to guess as to what a reasonable officer may do. The district court's reliance on subjective, after-the-fact rationalizations, and a reasonable officer standard undermines *Nix's* requirement for certain historical facts. "Reasonable probability" foments incentives for officers to ignore constitutional limits, knowing their actions can be justified retroactively. *Nix* demands certitude, the "reasonable probability" standard invites malleable speculation. This case allows this Court to clarify that inevitability, not probability is controlling.

II. This case allows this Court to reaffirm *Nix's* central rationale.

Some lower courts have faithfully applied *Nix*. For example, in *United States v. Heath*, 455 F.3d 52, 58, 60 (2nd Cir. 2006), the Second Circuit Court of Appeals correctly held that the government may not prevail on a claim of inevitable discovery "merely by establishing that it is more probable than not that the disputed evidence would have been obtained without the constitutional violation" rather, inevitability requires "substantial certainty with respect to each of the contingencies involved in the causal chain of inevitability." In *Heath*, the Court concluded that "illegally-obtained evidence will be admissible under the inevitable discovery exception to the exclusionary rule only where a court can find, with a high level of confidence, that each of the contingencies necessary to the legal discovery of the contested evidence would be resolved in the government's favor." *Id.* at 60. Applying *Heath*, the government would likely not be successful raising a claim of inevitable discovery in Mr. Ditto's case. The differing treatment of the exclusionary rule exception warrants this Court's review.

The Eighth Circuit Court of Appeals, by contrast, has applied the "reasonable probability" standard. *See Conner*, 127 F.3d at 667. Judges there, however, have opined that the "reasonable probability" standard deviates from *Nix*. In *United States v. Thomas*, 524 F.3d 855, 861 (8th Cir. 2008), two judges filed a concurring opinion examining "reasonable probability's" defects. Specifically, the concurrence reasoned that when evidence "is admissible if the government proves by a preponderance of the evidence that there is merely a 'reasonable probability' that the disputed evidence would have been discovered by lawful means[,]"*Nix* is dilute[ed]" and lower courts "open the possibility that police will be in a *better* position as a result of police error or misconduct." *Id.* at 861 (emphasis added)

(Colloton, S., Benton, D., concurring). Under *Nix*, there is no occasion for an enhanced law enforcement position stemming from a constitutional violation.

The "reasonable probability test" is markedly different from the inevitability requirement in *Nix*. The two standards are inconsistent and produce differing suppression outcomes. That the Eleventh Circuit recently overturned its "reasonable probability" standard demonstrates that the lower courts require definitive guidance on the inevitable discovery test. *See United States v. Watkins*, 13 F.4th 1202, 1212, 1215 (11th Cir. 2021). "Reasonable probability" demands less than inevitability. This Court should intervene to preserve *Nix's* purpose and careful exclusionary rule balance.

III. This case is an ideal vehicle for the question presented.

The facts of this case permit this Court to address the lower court creep of "reasonable probability" within the inevitable discovery context. This case allows this Court to remand to the Ninth Circuit Court of Appeals to address Mr. Ditto's suppression motion direct appeal applying the correct inevitability standard, not "reasonable probability." The remand will additionally allow this Court to clarify to courts nationally that there is no place for "reasonable probability" in the inevitable discovery calculus.

Moreover, accepting Mr. Ditto's petition and the jettisoning of "reasonable probability" will reinforce to the lower courts that inevitable discovery requires the government to establish with a high level of evidentiary certainty that the disputed evidence would have been obtained through lawful means. This case is the ideal matter to correct the widespread practice of judicial speculation and gap filling evident in the district court's ruling here in the inevitable discovery context.

CONCLUSION

Mr. Ditto's petition for a writ of certiorari should be granted.

Dated this 5th day of July, 2026.

Respectfully submitted,
By:

/s/ Chad Pennington

Chad Pennington, Deputy Federal Public Defender

Central District of California
321 E. 2nd Street
Los Angeles, CA 90012
Chad_Pennington@fd.org
Phone: (213) 894.2854

Counsel of Record for Petitioner