No. 07-513

In the Supreme Court of the United States

BENNIE DEAN HERRING, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the good-faith exception to the exclusionary rule applies when a police officer makes an arrest after receiving information from a different law enforcement agency about an outstanding warrant, and the information was incorrect because of a negligent error by that agency.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 492 F.3d 1212. The opinion of the district court (Pet. App. 13a-18a) is reported at 451 F. Supp. 2d 1290.

JURISDICTION

The judgment of the court of appeals was entered on July 17, 2007. The petition for a writ of certiorari was filed on October 11, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Middle District of Alabama, petitioner was convicted of possessing a firearm after having been convicted of a felony, in violation of 18 U.S.C. 922(g)(1), and

possession of methamphetamine, in violation of 21 U.S.C. 844(a). He was sentenced to 27 months of imprisonment. The court of appeals affirmed. Pet. App. 1a-12a.

1. On July 7, 2004, Investigator Mark Anderson of the Coffee County Sheriff's Department learned that petitioner was present at the Sheriff's Department, retrieving property from an impounded vehicle. Pet. App. 2a, 13a-14a. Investigator Anderson, who knew petitioner and "had reason to suspect that there might be an outstanding warrant for his arrest," asked Sandy Pope, the warrant clerk for the Coffee County Sheriff's Department, to check the county database. *Id.* at 2a. When Pope reported that there were no active warrants in Coffee County, Investigator Anderson asked her to check with neighboring Dale County. *Ibid.* Pope telephoned the Dale County Sheriff's Department, and was told by its warrant clerk that a check of a database maintained by the Dale County Sheriff's Department revealed that there was an active felony warrant for petitioner's arrest. *Ibid.* Pope asked the Dale County warrant clerk to fax her a copy of the warrant, and relayed the information about the warrant to Investigator Anderson. *Ibid.*

Investigator Anderson and a deputy sheriff left the station to pursue petitioner, who was already leaving in a pickup truck. Pet. App. 2a. The officers pulled over petitioner's truck and placed him under arrest. *Ibid.* In petitioner's right front pocket, the officers found methamphetamine. *Id.* at 14a. Under the front seat of the pickup, they found a handgun. *Id.* at 3a.

Meanwhile, the Dale County warrant clerk tried to locate a copy of the warrant for petitioner's arrest. Pet. App. 3a. Unable to find it, she called the Dale County

Clerk's Office, and was told that the warrant had been recalled. *Id.* at 3a, 14a. The Dale County warrant clerk "immediately" called Pope, who relayed the information to Investigator Anderson and the deputy sheriff. *Id.* at 3a. By that point, however, the officers had already arrested petitioner and searched his person and the pickup. *Ibid.* Between 10 and 15 minutes elapsed between the time the Dale County warrant clerk told Pope that there was an active warrant for petitioner's arrest, and when she called back with the correct information. *Ibid.*

2. A grand jury sitting in the Middle District of Alabama charged petitioner with one count of possessing a firearm after having been convicted of a felony and one count of possession of methamphetamine. Pet. App. 3a. Petitioner moved to suppress the physical evidence against him on the ground that it was the fruit of an unlawful arrest. *Ibid.*

After holding a suppression hearing, a magistrate judge recommended that petitioner's motion be denied. Pet. App. 3a-4a. After holding a supplemental hearing, the district court issued an opinion adopting the magistrate judge's recommendation. *Id.* at 13a-18a. The court found that where a warrant has been recalled, the Dale County Sheriff's Department's warrant clerk will "[n]ormally" receive a phone call from either the Dale County Clerk's Office or a judge's chambers, enter that information in the Dale County Sheriff's Department's computer system, and dispose of the physical copy of the warrant. *Id.* at 14a-15a. In this case, although the recalled warrant for petitioner's arrest had been returned to the Dale County Clerk's Office, the Dale County Sheriff's Department's computer system did not reflect that fact. *Id.* at 15a. Although it did not make a specific

finding, the district court accepted the testimony of the Dale County warrant clerk that "the mistake was probably the fault of the Dale County Sheriff's Department, not that of the Dale County Clerk's Office." *Ibid.*

The district court determined that this Court's decision in *Arizona* v. *Evans*, 514 U.S. 1 (1995), which recognized an exception to the exclusionary rule for arrests that occur as a result of erroneous computer records kept by court employees, should be extended to cover similar mistakes by law enforcement personnel so long as there is a "mechanism to ensure [the recordkeeping's] system accuracy over time" and there is no evidence that "the system 'routinely leads to false arrests.'" Pet. App. 17a (brackets in original) (quoting *Evans*, 514 U.S. at 17 (O'Connor, J., concurring)). In this case, the district court found that "the mistake was discovered and corrected within ten to 15 minutes," that there was "no credible evidence of routine problems with disposing of recalled warrants," and that the recordkeeping systems of both the Dale County Clerk's Office and the Dale County Sheriff's Office "were, and are, 'reliable.'" *Id.* at 17a-18a.

3. The court of appeals affirmed. Pet. App. 1a-12a. The court concluded that "the searches violated [petitioner's] Fourth Amendment rights," because petitioner's arrest had not been supported by probable cause or a warrant. *Id.* at 5a. But the court also stated that "whether to apply the exclusionary rule is 'an issue separate from the question [of] whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct.'" *Ibid.* (brackets in original) (quoting *United States* v. *Leon*, 468 U.S. 897, 906 (1984), and *Illinois* v. *Gates*, 462 U.S. 213, 223 (1983)). Applying the framework developed in *Leon* and

Evans, the court of appeals determined that suppression is not warranted unless there was "misconduct by the police or by adjuncts to the law enforcement team," "application of the [exclusionary] rule [will] result in appreciable deterrence of that misconduct," and "the benefits of the rule's application [will] not outweigh its costs." *Id.* at 9a.

As for the first condition, the court of appeals determined that "[t]he conduct in question" was the failure of an unidentified person in the Dale County Sheriff's Department "to record in the department's records the fact that the arrest warrant for [petitioner] had been recalled or rescinded." Pet. App. 9a. The court described that conduct as "at the very least negligent," and it "assume[d] for present purposes that the negligent actor * * * is an adjunct to law enforcement in Dale County and is to be treated for purposes of the exclusionary rule as a police officer." *Ibid.;* see *id.* at 9a n.1 (stating that this Court's decision in *Evans* "left open the possibility that the only misconduct which is relevant to an analysis of the exclusionary rule's deterrent effect is that of police officers, as distinguished from non-officer police personnel," but that the court "assum[ed] away that issue because it does not matter to our decision in this case").

Turning to the second issue, the court of appeals concluded, for "several reasons," that applying the exclusionary rule in "these circumstances * * * will not deter bad recordkeeping to any appreciable extent, if at all." Pet. App. 10a. The court stated that "[d]eterrents work best where the targeted conduct results from conscious decision making," but here "[t]here is no reason to believe that anyone in the Dale County Sheriff's Office weighed the possible ramifications of being negligent and decided to be careless in record keeping."

Ibid. The court of appeals also observed "that there are already abundant incentives for keeping records current," including "the inherent value of accurate record-keeping to effective police investigation," "the possibility of reprimand or other job discipline for carelessness," "the possibility of civil liability" for illegal arrests or other injury, and the "risk that the department where the records are not kept up to date will have relevant evidence excluded from one of its own cases as a result." *Id.* at 10a-11a. In addition, the court of appeals emphasized "the unique circumstance here that the exclusionary sanction would be levied not in a case brought by officers of the department that was guilty of the negligent record keeping, but instead it would scuttle a case brought by officers of a different department in another county, one whose officers and personnel were entirely innocent of any wrongdoing or carelessness." *Id.* at 11a. In the court's view, "[h]oping to gain a beneficial deterrent effect on Dale County personnel by excluding evidence in a case brought by Coffee County officers would be like telling a student that if he skips school one of his classmates will be punished." *Ibid.*

Finally, the court of appeals determined that "any minimal deterrence that might result from applying the exclusionary rule in these circumstances would not outweigh the heavy cost of excluding otherwise admissible and highly probative evidence." Pet. App. 11a-12a. The court of appeals emphasized, however, "that the test for reasonable police conduct is objective." *Id.* at 12a. Accordingly, "[i]f faulty record-keeping were to become endemic in [Dale County], * * * officers in Coffee County might have a difficult time establishing that their reliance on records from their neighboring county

was objectively reasonable." *Ibid.* (citing *Evans*, 514 U.S. at 17 (O'Connor, J., concurring)).

ARGUMENT

Petitioner contends (Pet. 10, 27) that the Eleventh Circuit has extended this Court's decision in *Arizona* v. *Evans*, 514 U.S. 1 (1995), to cover all negligent errors by law enforcement personnel. He argues that such an extension is unwarranted, and urges this Court to adopt the opposite per se rule and direct the exclusion of any evidence seized incident to an arrest that results from the negligence of any law enforcement agent. Pet. 8, 20-22, 29-30. The Eleventh Circuit, however, did not extend *Evans* to all negligent errors by law enforcement. Instead, the court held that application of the exclusionary rule was inappropriate "in these circumstances," which include "the unique circumstance" that the sanction here would be levied in a case "brought by officers of a different department in another county, one whose officers and personnel were entirely innocent of any wrongdoing or carelessness," and where no showing was made that the agency that provided the information routinely had problems purging its records of recalled warrants. Pet. App. 11a. The court correctly concluded that, in those circumstances, the high costs of suppressing probative evidence were not justified by the marginal interest in seeking to deter negligent conduct by a neighboring law enforcement agency. Its decision does not conflict with the decisions of any other federal court of appeals, and the claimed conflict with state cases does not warrant further review.

1. This Court has repeatedly emphasized that the exclusionary rule is "neither intended nor able to 'cure the invasion of the defendant's rights which he has al-

ready suffered'"; rather, it "operates as 'a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect.'" *Illinois* v. *Krull*, 480 U.S. 340, 347 (1987); see *United States* v. *Leon*, 468 U.S. 897, 906 (1984); *United States* v. *Calandra*, 414 U.S. 338, 347 (1974). Accordingly, "[s]uppression of evidence * * * has always been [a] last resort, not [a] first impulse," *Hudson* v. *Michigan*, 126 S. Ct. 2159, 2163 (2006), and, "[a]s with any remedial device, the [exclusionary] rule's application has been restricted to those instances where its remedial objectives are thought most efficaciously served," *Evans*, 514 U.S. at 11.

In *Leon*, this Court concluded "that the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion." 468 U.S. at 922. After determining that exclusion of such evidence could not be justified by "its behavioral effects on judges and magistrates," *id.* at 916; see *id.* at 916-917, the Court rejected as "speculative" the arguments that suppression would deter "magistrate shopping" or "encourage officers to scrutinize more closely the form of the warrant and to point out suspected judicial errors." *Id.* at 918. Accordingly, the Court held that "suppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary rule." *Ibid.*

In *Evans*, this Court applied the *Leon* analysis to evidence seized by an officer who had acted in reliance on an erroneous entry in a police computer system indicating that there was an outstanding warrant for the

defendant's arrest. 514 U.S. at 3-4, 14-16. Assuming for purposes of its decision that "the erroneous information resulted from an error committed by an employee of the office of the Clerk of Court," *id.* at 4, the Court concluded that "the exclusion of evidence at trial would not sufficiently deter future errors so as to warrant such a severe sanction," *id.* at 14. The Court explained that "the exclusionary rule was historically designed as a means of deterring police misconduct, not mistakes by court employees," and it perceived "no basis for believing that application of the exclusionary rule in these circumstances will have a significant effect on court employees responsible for informing the police that a warrant has been quashed." *Id.* at 15; see *ibid.* (noting that "court clerks are not adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime" and have "no stake in the outcome of particular criminal prosecutions"). The Court also stated that application of the exclusionary rule "could not be expected to alter the behavior of the arresting officer," because there was "no indication that [he] was not acting objectively reasonably when he relied upon the police computer record." *Id.* at 15-16.

Petitioner correctly notes (Pet. 8-10, 22), that the "categorical exception to the exclusionary rule" announced in *Evans*, see 514 U.S. at 16, does not directly control here because both the district court (Pet. App. 15a, 18a) and the court of appeals (*id.* at 9a n.1, 11a) proceeded on the assumption that his arrest resulted from an error by the Dale County Sheriff's Office rather than the Dale County Clerk's Office. See *Evans*, 514 U.S. at 16 n.5 ("declin[ing] to address" whether a similar analysis "would apply in order to determine whether the evidence should be suppressed if police personnel were

responsible for the error"). Petitioner errs in assuming, however, that *some* categorical rule must apply to evidence seized as a result of an error by any person who can be characterized as an "adjunct[] to the law enforcement team." *Id.* at 15.

To the contrary, this Court's decisions "do not dictate * * * a similar categorical approach with respect to police clerical errors." U.S. Br. at 12, *Arizona* v. *Evans*, 514 U.S. 1 (1995) (No. 93-1660). In situations where a person affiliated with the police transmits erroneous information to an arresting officer, exclusion of any resulting evidence could conceivably deter future Fourth Amendment violations. *Ibid.* But this Court has repeatedly rejected the view that the Fourth Amendment "requires adoption of every proposal that might deter police misconduct," *Hudson*, 126 S. Ct. at 2166 (quoting *Calandra*, 414 U.S. at 350), and whether the exclusionary rule should be applied in situations involving clerical errors by law enforcement officials "depends on the type of error and the circumstances in which it arises." U.S. Br. at 7, *Arizona* v. *Evans*, 514 U.S. 1 (1995) (No. 93-1660); see *Evans*, 514 U.S. at 11 (exclusionary rule applies only "where its remedial objectives are thought most efficaciously served."); *United States* v. *Janis*, 428 U.S. 433, 454 (1976) (where "the exclusionary rule does not result in appreciable deterrence, then, clearly, its use * * * is unwarranted."). And where, as here, (1) the error was negligent rather than deliberate, (2) the error was made by a different law enforcement agency than the one that made the arrest, and (3) the recordkeeping system is generally reliable, the balance tips against suppressing highly probative and intrinsically reliable evidence.

Although petitioner contends (Pet. 23-29) that the Eleventh Circuit's decision is incorrect, he identifies no significant flaws in its analysis. Most importantly, petitioner fails to refute the proposition that excluding evidence is unlikely to provide any significant deterrent benefits in situations where the law enforcement agency that made the negligent error will not bear the brunt of the sanction of exclusion.

Petitioner contends that, because an arresting officer may rely on the knowledge of other law enforcement agencies to establish probable cause, he should also be charged with knowledge of any mistakes made by those agencies that might render the arrest illegal. Pet. 27-29. But that argument fails to distinguish between whether an arrest is lawful and whether the exclusionary rule applies to its fruits. This Court made precisely that point in *Evans* while addressing *Whiteley* v. *Warden*, 401 U.S. 560 (1971), a case on which petitioner relies. Pet. 28. In *Whiteley*, this Court concluded that "an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest." 401 U.S. at 568. But in *Evans*, this Court observed that "[a]lthough *Whiteley* clearly retains relevance in determining whether police officers have violated the Fourth Amendment," its "precedential value" regarding application of the exclusionary rule is "dubious" because *Whiteley* involved the sort of "reflexive application of the exclusionary rule" that the Court has rejected in more recent cases. *Evans*, 514 U.S. at 13; see *Hudson*, 126 S. Ct. at 2164 (stating that the Court has "long since rejected" the approach of *Whiteley* and similar cases). As *Evans* reiterates, "the issue of exclusion is separate from whether the Fourth Amendment has been violated" and "exclu-

sion is appropriate only if the remedial objectives of the rule are thought most efficaciously served." 514 U.S. at 13-14; see *Leon*, 468 U.S. at 906. The relevant question, therefore, is not whether law enforcement is a "collaborative effort" (Pet. 28), but whether sanctioning one law enforcement agency for the apparently isolated negligent mistake of another will be efficacious in deterring future errors. The Eleventh Circuit correctly determined that it would not, and thus appropriately declined to treat "law enforcement" as a single entity for purposes of the exclusionary rule.[1]

Although petitioner also disputes (Pet. 23-27) the Eleventh Circuit's additional reasons for finding that

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[1] Petitioner contends that various decisions interpreting *Miranda* v. *Arizona*, 384 U.S. 436 (1966), support his claim that Investigator Anderson should be held responsible for the negligence of an unknown person in the Dale County Sheriff's Office. Pet. 28-29. But the jurisprudence developed under the Fourth Amendment exclusionary rule and under the *Miranda* decision are not interchangeable. See *Dickerson* v. *United States*, 530 U.S. 428, 441 (2000) ("unreasonable searches under the Fourth Amendment are different from unwarned interrogation under the Fifth Amendment"); *Withrow* v. *Williams*, 507 U.S. 680, 686-695 (1993) (restrictions on exercise of federal habeas jurisdiction in Fourth Amendment cases do not apply to claims under *Miranda*); *Oregon* v. *Elstad*, 470 U.S. 298, 303-304 (1985) (refusing to apply the traditional "fruits" doctrine developed in Fourth Amendment cases to the *Miranda* context, due to the "fundamental differences" between two doctrines). Moreover, even if this Court's Fifth Amendment decisions were relevant here, *Arizona* v. *Roberson*, 486 U.S. 675 (1988) (Pet. 28), is not analogous to this case: Whereas the officer who interrogated Roberson after he invoked his *Miranda* rights should have known that the interrogation was unlawful, *id.* at 687-688, here it is not disputed that "[t]he Coffee County officers made the arrest and carried out the searches incident to it based on their good faith, reasonable belief that there was an outstanding warrant for [petitioner] in Da[l]e County," Pet. App. 4a.

suppression is not appropriate here, none of his arguments undermines the decision below. First, the Eleventh Circuit did not conclude that "negligence cannot be meaningfully deterred." Pet. 23. Instead, it observed that "[d]eterrents work *best* when the targeted conduct results from conscious decisionmaking" and that "a negligent *failure to act*" is more difficult to deter than "a deliberate or tactical choice to act." Pet. App. 10a (emphases added). Those observations are self-evidently true, and petitioner does not contend otherwise.

Second, petitioner denies that "the inherent value of accurate record-keeping" (Pet. App. 10a) provides any incentive for expunging recalled or otherwise invalid warrants from databases, arguing that providing erroneous information about such warrants may aid the police by "enlarging the officers' perceived authority to act" in cases where they want to investigate an individual for wrongdoing. Pet. 25. But police officers do not "check computer databases only when they want to investigate an individual whom they suspect of wrongdoing." *Ibid.* Indeed, Investigator Anderson directed Pope to check the Coffee and Dale County records not to investigate petitioner, but to ensure that any outstanding warrants were properly served. Pet. App. 2a; 9/29/05 Tr. 8-9, 20-21. Moreover, in most cases, an arrest pursuant to an invalid warrant will represent a fruitless waste of police resources. Thus, as the Eleventh Circuit noted, "[i]naccurate and outdated information in police files is just as likely, if not more likely, to hinder police investigations as it is to aid them." Pet. App. 10a.

Third, petitioner denies that any "possibility of reprimand or other job discipline for carelessness in record keeping" exists among law enforcement agents. Pet. 25-

26 (emphasis deleted) (quoting Pet. App. 10a). Petitioner cites no evidence for that assertion, and common sense suggests otherwise. Virtually all employees are subject to reprimand and discipline for shoddy record-keeping, and there is no reason to believe that police department employees are somehow unique in this regard. See *Hudson*, 126 S. Ct. at 2168 (describing "the increasing professionalism of police forces, including a new emphasis on internal police discipline").

Fourth, petitioner contends that "no authority" supports the Eleventh Circuit's statement that "there is the possibility of civil liability if the failure to keep records updated results in illegal arrests or other injury." Pet. 26-27 (emphasis deleted) (quoting Pet. App. 10a). Petitioner is incorrect. Apart from any remedies state law may provide, the victim of an illegal arrest caused by inaccurate police records may be able to seek redress against the responsible officers under 42 U.S.C. 1983. While qualified immunity may prevent recovery in many cases, it does not necessarily provide a complete defense. See, *e.g.*, *Bibart* v. *Stachowiak*, 888 F. Supp. 864, 867-868 (N.D. Ill. 1995) (holding that a dispatcher who misread a computerized record was not entitled to qualified immunity as a matter of law in suit brought by person arrested as a result of the error); *Kirk* v. *Hesselroth*, 707 F. Supp. 1149, 1152, 1155 (N.D. Cal. 1989) (same result as to police department inspector who caused the plaintiff's arrest by entering inaccurate information into a computer database). Indeed, a judge in the Eastern District of California recently declined to grant summary judgment based on qualified immunity to the arresting officers in *People* v. *Willis*, 46 P.3d 898 (Cal. 2002), one of the decisions on which petitioner relies. Pet. 15, 24, 28; see *infra* at 19 n.6. See *Willis* v. *Mul-*

lins, 517 F. Supp. 2d 1206 (E.D. Cal. 2007). There may also be situations in which recovery may be had against a municipality if the error resulted from the municipality's own policies, customs, or usages. See *Berg* v. *County of Allegheny*, 219 F.3d 261, 275-277 (3d Cir. 2000) (per curiam) (municipality was not entitled to summary judgment in Section 1983 case where it employed a system for issuing arrest warrants "where the slip of a finger could result in wrongful arrest and imprisonment"), cert. denied, 531 U.S. 1072, and 531 U.S. 1145 (2001); *Rogan* v. *City of Los Angeles*, 668 F. Supp. 1384 (C.D. Cal. 1987) (City of Los Angeles responsible as a matter of law for plaintiff's repeated arrests pursuant to a computer record that failed to describe suspect with particularity). In short, the threat of civil litigation may provide a substantial deterrent to police errors that result in unlawful arrests.

2. No "deeply entrenched" conflict (Pet. 17) exists with respect to the issue presented here. In the 13 years since *Evans* was decided,[2] no other federal court of appeals has issued a published decision addressing whether the exclusionary rule applies when a police officer makes an arrest based on that officer's objectively reasonable reliance on incorrect information from a dif-

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[2] Before *Evans*, the Fifth Circuit applied the good-faith exception to evidence seized following a *Terry* stop that had been made partly in reliance on a dispatcher error. *United States* v. *De Leon-Reyna*, 930 F.2d 396 (1991) (en banc) (Pet. 11). The Fifth Circuit has not revisited that holding in a published decision since *Evans*, although an unpublished decision concluded, citing *De Leon-Reyna*, that "the good faith exception to the exclusionary rule applies regardless of whether the error was by court clerks or police personnel." *United States* v. *Castaneda*, No. 01-10228, 2001 WL 1085086, at *1 (Aug. 29, 2001) (Pet. 11).

ferent law enforcement agency.[3] Moreover, the only unpublished decision to have considered the issue reached the same conclusion as the decision below. In *United States* v. *Williams*, No. 97-4849, 1998 WL 276460 (May 27, 1998), the Fourth Circuit declined to suppress evidence when an officer in Prince George's County, Maryland, had made an arrest based on incorrect infor-

[3] Although he cites them (Pet. 12 n.2; Pet. 16 n.4), petitioner does not assert that the Eleventh Circuit's decision conflicts with *United States* v. *Santa*, 180 F.3d 20 (2d Cir.), cert. denied, 528 U.S. 943 (1999), *United States* v. *Shareef*, 100 F.3d 1491 (10th Cir. 1996), or *United States* v. *Southerland*, 486 F.3d 1355 (D.C. Cir.), cert. denied, 128 S. Ct. 414 (2007). In *Santa*, the Second Circuit observed that "*Evans*'s categorical exception to the exclusionary rule applies only when police rely on erroneous computer records resulting from 'clerical errors of court employees.'" 180 F.3d at 29 (quoting *Evans*, 514 U.S. at 16). That statement, however, merely identified the parameters of *Evans*' holding, and because the Second Circuit concluded that the error in that case was "attributable to court employees rather than to police personnel," *ibid.*, it had no occasion to consider whether a good-faith exception (categorical or not) could ever apply to evidence obtained as a result of law enforcement errors. In *Shareef*, the Tenth Circuit stated that "the exclusionary rule applies when an error by a dispatcher or an officer leads to a Fourth Amendment violation." 100 F.3d at 1503. But that statement was clearly *dicta*, because the court ultimately found that no Fourth Amendment violation had occurred. *Ibid.* In addition, because *Shareef* did not involve an arrest based on mistaken information provided by a different law enforcement agency, petitioner acknowledges that it "involve[d] [a] different kind[] of error[] than" the one at issue in this case. Pet. 16 n.4. In *Southerland*, the District of Columbia Circuit suggested that the exclusionary rule should not be applied when officers reasonably rely on incorrect information from the Department of Motor Vehicles (DMV). See 100 F.3d at 1360-1361. That discussion, however, was *dicta*, because the defendant had failed to establish that he was arrested based on incorrect information, or to contend in a timely fashion that the DMV was a law enforcement agency. *Id*. at 1359, 1360. See Pet. 12 n.2 (acknowledging that *Southerland* made no holding with respect to the question before the Court).

mation about an outstanding warrant from Frederick County, Maryland. See *id.* at *3. Contrary to petitioner's assertion, *Williams* did not "interpret *Evans* as exempting all clerical errors from the exclusionary rule." Pet. 11. Rather, in that unpublished decision, the Fourth Circuit acknowledged that *Evans* "did not address" the situation "where erroneous information was prepared by law enforcement personnel," 1998 WL 276460, at *2, but concluded that "[a]pplying the exclusionary rule to the handgun in [that] case" was unwarranted because the arresting officer's conduct had been objectively reasonable, and because doing so "would serve no other purpose than * * * to make [an officer] less willing to do his duty" to make an arrest, *id.* at *3 (brackets in original) (quoting *Leon*, 468 U.S. at 920, and *Stone* v. *Powell*, 428 U.S. 465, 539-540 (1976) (White, J., dissenting)).[4]

Nor is there a direct conflict between the decision below and any of the state supreme court decisions cited by petitioner. Pet. 13-14. Petitioner relies most heavily on *Shadler* v. *State*, 761 So. 2d 279 (Fla.), cert. denied, 531 U.S. 924 (2000). In *Shadler*, the defendant was arrested after a computer database incorrectly indicated that his driver's license had been suspended. *Id.* at 280-281. The Florida Supreme Court ordered suppression

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[4] In *United States* v. *Sparks*, 37 Fed. Appx. 826 (2002) (Pet. 12 n.2), an Eighth Circuit panel declined to order suppression when a police dispatcher mistyped license plate information relayed by the arresting officer, and thus erroneously told the officer that the plates belonged to a wholly different vehicle. The court of appeals observed that both the dispatcher and the officer had acted in good faith, and that had the dispatcher entered the correct information, the officer would have learned that the license plates on the defendant's car had expired one month earlier. See *id.* at 827-828, 829.

of narcotics seized during a search incident to that arrest, reasoning that suppression was required under its previous decision in *State* v. *White*, 660 So. 2d 664 (Fla. 1995). See Pet. 14; *Shadler*, 761 So. 2d at 282-286.[5] In so holding, the court emphasized that the database was maintained by a division of the Department of Highway Safety that was a "sister division[]" of, and performed "interrelated functions" with, the Florida Highway Patrol. *Id.* at 283 n.3; see *id.* at 282-284. *Shadler* did not discuss whether the arresting officer was himself an agent of the Florida Highway Patrol. But the court's analysis presumed that the police officers who would bear the brunt of excluding the resulting evidence were "fellow employees" of those responsible for maintaining the database, with an "institutional obligation [and] a direct mechanism for [providing] feedback [about] * * * the effect of the exclusionary rule." *Id.* at 286. In this case, however, no such obligation or mechanism exists, because Investigator Anderson was not a "fellow employee" of anyone in the Dale County Sheriff's Office. See *Commonwealth* v. *Wilkerson*, 763 N.E.2d 508, 512 (Mass. 2002) (distinguishing *Shadler* on the ground that exclusion would not "improve record-keeping efforts").

In addition, *Shadler* applied the exclusionary rule to a massive computer database that was accessible to, and

[5] The *Shadler* court concluded that, under *White*, "if the error causing the arrest is attributable to law enforcement personnel, then the seized evidence must be suppressed under the exclusionary rule." 761 So. 2d at 281. *White*, however, involved a clerical error that was committed by the same sheriff's office that made the arrest. *White*, 660 So. 2d at 666; see *id.* at 668 ("The good faith exception is inapplicable in this instance since it was within the collective knowledge of the sheriff's office that the warrant was void."). That case therefore does not establish a categorical rule that the good-faith exception cannot apply if the error is attributable to any law enforcement personnel.

relied upon by, "every law enforcement agency in the state, from the Highway Patrol to the smallest municipal police department." 761 So. 2d at 284. Given the size of the relevant database, "even a slight error rate puts thousands of Florida's citizens at risk of unlawful arrests and subsequent seizures." *Id.* at 285. Here, by contrast, the relevant database apparently served only a single rural county, and it was not directly accessible by other law enforcement agencies. See p. 2, *supra* (noting that Coffee County warrant clerk called Dale County warrant clerk, who checked the Dale County database). Because the characteristics of specific law enforcement information systems may prove relevant to determining whether an arresting officer's good-faith reliance on those systems warrants an exception to the exclusionary rule, see p. 24, *infra*, this case does not present the same issue as *Shadler* and the two decisions cannot therefore be described as conflicting.[6]

Petitioner also contends (Pet. 14) that the decision below conflicts with *Hoay* v. *State*, 71 S.W.3d 573 (Ark. 2002). In *Hoay*, a police officer made a valid stop of the

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[6] Petitioner also relies (Pet. 15) on *People* v. *Willis*, 46 P.3d 898 (Cal. 2002), a case in which a police officer and a parole officer jointly conducted a search based on outdated information that the defendant was on parole and subject to a warrantless search condition. *Id.* at 899. That decision has no bearing here, because the error in *Willis* was committed by the agency employing one of the two officers involved in the search and may even have been committed by that officer herself. *Id.* at 908-910, 912. In addition, the court suggested that the officers who conducted the search had been negligent in not doing more to determine whether the defendant was actually on parole. *Id.* at 911. Accordingly, although *Willis* suggests that "the good faith exception does not apply where law enforcement is collectively at fault for an inaccurate record that results in an unconstitutional search," *id.* at 915, that statement was *dicta*.

defendant's car, and discovered, after running his driver's license through a database maintained by the National Crime Information Center (NCIC) and speaking with two dispatchers from a neighboring county, that the defendant was subject to an outstanding arrest warrant from the neighboring county. *Id.* at 574. The officer arrested the defendant and discovered drugs on his person. *Ibid.* It was later discovered that the warrant had been quashed before the defendant's arrest. *Ibid.* After noting that the record did not reveal who was responsible for the error, the Arkansas Supreme Court stated that the government had "fail[ed] to address whether [the] good faith" shown by the arresting officer "extended * * * to the law enforcement personnel" in the neighboring county. *Id.* at 577. The court concluded that "[i]t would fly in the face of the *Leon* principle" not to suppress the evidence seized during the defendant's arrest if the law enforcement personnel in the other county were at fault, stating: "If the touchstone of the exclusionary rule is deterrence of police misconduct, as *Leon* makes clear, that rule should apply equally to defective recordkeeping by law enforcement." *Ibid.*

Any tension between the Eleventh Circuit's decision in this case and *Hoay* does not merit this Court's review. *Hoay* involved an error in the NCIC's database, a computer program that contains millions of records and combines information from law enforcement agencies across the nation. See *Evans*, 514 U.S. at 26-27 (Ginsburg, J., dissenting). As noted earlier, the differences between that database and the entirely local one used by Dale County could prove dispositive to the exclusionary rule analysis. See p. 24, *infra*. Moreover, the majority's terse analysis in *Hoay* did not attempt to explain how exclusion of evidence seized by one law enforcement

agency could be expected to improve recordkeeping by an entirely different agency. See *Hoay*, 71 S.W.2d at 578 (Arnold, C.J., dissenting) (arguing that the majority's analysis "implausibl[y]" "lump[ed] *all* police personnel, from whatever county, city, or state, together under the theory that, in doing so, it will have some sort of universal deterrent effect"). Because the *Hoay* decision prompted a vigorous and cogent dissent by three justices that paralleled the reasoning of the Eleventh Circuit's published decision in this case, the Arkansas court may choose to reconsider that decision in the future.[7]

Nor is there any direct conflict between the decision below and *State* v. *Allen*, 690 N.W.2d 582 (Neb. 2005) (Pet. 15). In *Allen*, a police dispatcher misunderstood a licence plate number orally relayed by a police officer, and, as a result, incorrectly told the officer that the plates were not assigned to the vehicle to which they

[7] Petitioner also claims (Pet. 16-17) that three other state courts of last resort held, before *Evans*, that "the exclusionary rule applies when law enforcement personnel commit clerical errors leading to illegal arrests." Pet. 16. None of these decisions conflicts with the decision below. In *People* v. *Turnage*, 642 N.E.2d 1235 (1994), the Illinois Supreme Court excluded evidence seized pursuant to a repetitive warrant in reliance on *Whiteley* v. *Warden*, 401 U.S. 560 (1971). But, as this Court has subsequently made clear, "[the] precedential value [of *Whiteley*] regarding application of the exclusionary rule is dubious." *Evans*, 514 U.S. at 13; see *Hudson*, 126 S. Ct. at 2164 (stating that this Court has "long since rejected [*Whiteley*'s] approach"). In *Ott* v. *State*, 600 A.2d 111 (Md.), cert. denied, 506 U.S. 904 (1992), the outdated information on which the arresting officer relied was the fault of another officer in the same sheriff's department, and the court specifically relied on that fact in declining to apply a good-faith exception. See *id.* at 118. Finally, *People* v. *Jennings*, 430 N.E.2d 1282, 1285 (N.Y. 1981), was decided before *Leon*, and failed even to consider whether the exclusionary rule admits of any good-faith exceptions.

were attached. *Id.* at 586. The Nebraska Supreme Court ordered suppression of evidence seized during an ensuring arrest, reasoning that the dispatcher "was at least * * * an adjunct to law enforcement," *id.* at 591; that the dispatcher and the officer had acted negligently in not verifying the plate number before running it, *id.* at 592; that there was no evidence that the error was "an isolated 'honest mistake' which is unlikely to recur," *ibid.*, and that "the threat of exclusion [was] likely to cause police officers and dispatchers to exercise greater care" in the future, *id.* at 593.

The considerations relied upon in *Allen* are not present here. The Dale County employee who made the error here did not work for the Coffee County Sheriff's Department, the agency that made the arrest. Given the information he had been provided, Investigator Anderson's actions in arresting petitioner were entirely reasonable. The district court specifically found that the recordkeeping system in Dale County is generally reliable, and that the error that occurred in this case does not reflect a more general problem. Pet. App. 18a. And excluding evidence in a federal prosecution that is based on an arrest made by Coffee County officers is highly unlikely to influence the future conduct of Dale County employees.

Finally, there is also no conflict between the decision below and *People* v. *Fields*, 785 P.2d 611 (Colo. 1990) (Pet. 15-16), or *People* v. *Blehm*, 983 P.2d 779 (Colo. 1999) (Pet. 16). In *Fields*, which pre-dates this Court's decision in *Evans*, the defendant was arrested based on inaccurate information contained in the NCIC database. 785 P.2d at 612. The Colorado Supreme Court ordered suppression of evidence seized during the arrest, holding that its admission could not be justified under a state

statute providing that otherwise-admissible evidence "shall not be suppressed by the trial court if the court determines that the evidence was seized by a peace officer * * * as a result of a good faith mistake or a technical violation." *Id.* at 613 (quoting Colo. Rev. Stat. § 16-3-308(1) (1990)). *Fields* did not purport to rest on federal law. In any event, because both the arrest and the error leading up to it were made by Denver police officers, see *Blehm*, 983 P.2d at 796, *Fields* did not present the question of whether an error by officials in one jurisdiction may warrant suppression of evidence seized by officials of another. *Blehm*, which was decided after *Evans*, is even more off point. There, the Colorado Supreme Court applied the same state statute at issue in *Fields* to an error by a court clerk and admitted the evidence. *Ibid.*

3. Petitioner contends that certiorari is necessary because "as policing becomes ever more reliant on computerized systems, the number of illegal arrests and searches based on negligent recordkeeping is poised to multiply." Pet. 18. Petitioner cites no evidence, however, to suggest that warrantless arrests based on the type of error that occurred here is either a significant, or an increasing, problem. Petitioner likewise does not challenge the conclusion of both the court of appeals and the district court that "'there [was] no credible evidence of routine problems with disposing of recalled warrants' and updating records in Dale County." Pet. App. 12a (brackets in original) (quoting *id.* at 17a). Cf. *Evans*, 514 U.S. at 17 (O'Connor, J., concurring) (stating that it "would *not* be reasonable for the police to rely * * * on a recordkeeping system, their own or some other agency's, that has no mechanism to ensure its accuracy over time and that routinely leads to false arrests").

Nor would this case present an appropriate vehicle for considering the ways in which "computer technology has changed the nature of threats to citizens' privacy over the past half century," *Evans*, 514 U.S. at 22 (Stevens, J., dissenting), or the extent to which "computerization greatly amplifies an error's effect" in situations where "many agencies * * * share access to [a single] database," *id.* at 26 (Ginsburg, J., dissenting). This case does not involve a database created, maintained, or accessed by multiple law enforcement agencies. Rather, the Dale County Sheriff's Office database at issue in this case appears to have been maintained for in-office use only, as demonstrated by the fact that it was not accessible to other law enforcement agencies or the Dale County Clerk's Office. See p. 2, *supra*; see also 9/29/05 Tr. 45-48; 10/21/05 Tr. 8, 11. Dale County's decision to maintain its list of outstanding warrants on a computer did not cause, or expand the consequences of, the recordkeeping error that resulted in petitioner's arrest. The events of this case presumably would have played out precisely the same if Dale County had used notecards or a ledger to keep track of warrants. See 10/21/05 Tr. 13 (error occurred because unidentified person who returned the warrant to the Clerk's Office failed to update the database to reflect that the warrant had been recalled). "[T]he increasing use of computer technology in law enforcement" is "an evolving problem that this Court need not * * * resolve too hastily." *Evans*, 514 U.S. at 23 (Ginsburg, J., dissenting). Because the overall reliability and usefulness of large-scale law enforcement information systems is not at issue here, consideration of whether the good-faith exception should extend to situations where police rely on errone-

ous information contained in such systems should await a case where those issues can be thoroughly explored.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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