No. _____

In the
Supreme Court of the United States

VALUELAND AUTO SALES, INC.;
RON BENIT,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

When the district court dismisses all criminal charges against a defendant, does that court have jurisdiction over a motion to expunge the records relating to those charges, as held by the Second, Tenth, and D.C. Circuits, or does the district court lack jurisdiction over such motions, as held by the First, Third, Fourth, Fifth, Sixth, Seventh, and Eleventh Circuits?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The petitioners are Ron Benit and Valueland Auto Sales, Inc. There is no parent corporation of Petitioner Valueland, and no publicly-owned corporation owns 10% or more of Valueland's stock.

The respondent is the United States of America.

LIST OF RELATED CASES

1. *United States v. Valueland Auto Sales, Inc., et al.*, S.D. Ohio Case No. 2:13-cr-00143 (judgment entered May 26, 2020)

2. *United States v. Valueland Auto Sales, Inc., et al.*, 6th Cir. No. 20-3596 (judgment entered May 13, 2021)

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The Sixth Circuit's opinion below is reported at *United States v. Valueland Auto Sales, Inc.*, 847 F. App'x 344 (6th Cir. 2021), reproduced as Appendix A. The opinion of the District Court for the Southern District of Ohio is unpublished but available at 2020 WL 9594416, and is reproduced as Appendix B.

JURISDICTIONAL STATEMENT

The Court of Appeals for the Sixth Circuit entered judgment on May 13, 2021. Petitioner timely filed this petition within ninety days. *See* Sup. Ct. Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

This case concerns the scope of jurisdiction in federal criminal cases. 18 U.S.C. § 3231 provides as follows:

> The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

INTRODUCTION

"The dual aim of our criminal justice system is that guilt shall not escape *or innocence suffer*." *United States v. Nobles*, 422 U.S. 225, 227 (1975) (emphasis added). Yet, despite these aims, a well-established circuit split exists over a jurisdictional issue that results in unnecessary suffering and harm to innocent citizens. In particular, the circuits are split over whether district courts have jurisdiction to consider a defendant's motion to expunge records of fully dismissed criminal charges.

The Second, Tenth, and D.C. Circuits have held that district courts have inherent equitable authority to consider motions to expunge criminal records when the district court previously dismissed all charges. *United States v. Trzaska*, 781 F. App'x 697, 699 n.2 (10th Cir. 2019) (noting that federal courts have inherent authority to rule on expungement motions); *Doe v. United States*, 833 F.3d 192, 197 (2d Cir. 2016) (holding that expungement after a dismissal "lies within the equitable discretion of the court" (quotation omitted)); *Doe v. Webster*, 606 F.2d 1226, 1230-31 (D.C. Cir. 1979) (holding that courts have "inherent equitable powers" to order expungement based on "unusual and extraordinary circumstances," including "serious governmental misbehavior leading to the arrest, or unusually substantial harm to the defendant not in any way attributable to him"); *see also United States v. Hall*, 2020 WL 1286386, at *1 (D.D.C. Mar. 18, 2020) (applying *Webster*'s holding).

Seven other circuits have held that the district courts do not have jurisdiction over such expungement

motions. *United States v. Coloian*, 480 F.3d 47 (1st Cir. 2007); *United States v. Dunegan*, 251 F.3d 477 (3d Cir. 2001); *United States v. Mettetal*, 714 F. App'x 230 (4th Cir. 2017); *Sealed Appellant v. Sealed Appellee*, 130 F.3d 695 (5th Cir. 1997); *United States v. Field*, 756 F.3d 911 (6th Cir. 2014); *United States v. Wahi*, 850 F.3d 296 (7th Cir. 2017); *United States v. Adalikwu*, 757 F. App'x 909 (11th Cir. 2018).[1] These circuits base their holding on this Court's decision in *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994), regarding ancillary jurisdiction. In *Kokkonen*, this Court held that federal courts may exercise ancillary jurisdiction over matters for two purposes: "(1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable a court to function successfully, this is to manage its proceedings, vindicate its authority, and effectuate its decrees." 511 U.S. at 379-80 (citations omitted).

However, this Court has also noted that ancillary jurisdiction involves determining when a federal court may "hear and decide a state-law claim arising between citizens of the same State." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 370 (1978). This Court has not addressed whether (or to what extent) its ancillary-

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[1] The Eighth and Ninth Circuits have held that district courts do not have jurisdiction over a motion to expunge records of conviction. *See United States v. Crowell*, 374 F.3d 790 (9th Cir. 2004); *United States v. Meyer*, 439 F.3d 855 (8th Cir. 2006). Petitioners have found no case from these circuits addressing a district court's jurisdiction over motions to expunge records in the specific circumstances presented here, *i.e.*, after dismissal of all charges.

jurisdiction jurisprudence applies in federal criminal cases. And without this Court's guidance, a criminal defendant's ability to remedy the consequences of being wrongly accused depends entirely on geography.

Here, the Government wrongly accused Petitioners of violating federal structuring laws. The Sixth Circuit even noted that the Government "uncovered no evidence of criminal conduct, so the Government moved to drop the charges." In fact, these unwarranted accusations were part of the Government's overall and longstanding abuse use of structuring charges to obtain forfeiture orders against small businesses' rightfully-generated income. The Government's misconduct and overreach eventually lead to an Inspector General investigation, which resulted in changes in the Government's administrative policy and Congressional action. However, these changes came too late for Petitioners who continue to suffer adverse consequences of the Government's overreach.

Because Petitioners continue to suffer harm based on the Government's conduct, Petitioners filed a motion to expunge their criminal records with the district court that dismissed the charges against them. In reviewing Petitioners' motion, the district court specifically noted that Petitioners' "prosecution was troubling in several respects" and that it was "regrettable" that they continued to suffer ongoing consequences. The district court stated that it would have granted Petitioners' motion to expunge if it believed it had jurisdiction, but, based on Sixth Circuit precedent, it held that it did not have jurisdiction and denied Petitioners' expungement motion.

If Petitioners resided in Colorado, New York, or the District of Columbia, the district court would have granted their motion to expunge, and they would be free from the adverse consequences of the Government's misguided and troubling conduct. As fate would have it, Petitioners happen to reside in Ohio where the Sixth Circuit has held that district courts do not have jurisdiction to correct these wrongs.

This Court should grant certiorari in order to address the conflict over this important jurisdictional issue. The courts' power to consider expungement motions affects individuals in every state, and whether a district court has such power should not depend upon the residency of the individual.

STATEMENT OF THE CASE

1. Petitioners Ron Benit and Valueland Auto Sales, Inc. are victims of the Government's systematic use of structuring charges against small businesses in order to obtain those businesses' funds through the issuance of forfeiture orders. "Structuring is the practice of spreading cash deposits across many banks in amounts small enough that the banks do not have to report the deposits to regulators." Pet. App. at 2. Structuring is a common practice of organized crime. *Id.* However, instead of focusing on organized crime, the Government has for years targeted innocent small businesses. *Id.* at 23. The nature of these businesses meant that they dealt with large amounts of cash—all from *legal* sources—that frequently needed to be deposited at banks. *Id.* at 43. Because of civil forfeiture laws, the Government gained millions of dollars from the

unwarranted use of structuring charges against these small businesses. *Id.* at 23.

The targeting of these innocent businesses devastated the owners' livelihoods and led to an investigation by the Treasury Inspector General for Tax Administration ("TIGTA"). The investigation found that "the Asset Seizure and Forfeiture Program was not conducted in a manner consistent with its stated goal of interdicting criminal enterprises." *Id.* at 41. TIGTA found that many businesses "had reasonable explanations that should have been considered," but were routinely ignored by the Government. *Id.* at 58-59. The investigation also uncovered the Government's "unethical" behavior of leveraging non-prosecution of a criminal case to resolve civil forfeiture actions in the Government's favor. *Id.* at 70-71.

The Government's overreach and unethical behavior led to a number of complaints and inquiries directed at the Government. These complaints resulted in multiple changes. In 2014, the IRS decided that it would no longer pursue forfeiture of funds from legal sources. *Id.* at 12-13. The Department of Justice followed suit in March 2015 to focus the use of structuring charges "against actors that structure financial transactions to hide significant criminal activity." *Id.* at 10-11. Congress even enacted the Taxpayer First Act, which only allows seizure of property for alleged structuring allegations "if the property seized was derived from an illegal source or the funds were structured for the purpose of concealing

the violation of a criminal law or regulation other than [the structuring law]." 31 U.S.C. § 5317(c)(2)(B)(i).

Unfortunately, the changes in the law and government policies were too late for Benit and Valueland, both of whom suffered greatly from the Government's unwarranted structuring charges. Pet. App. at 2.

2. In 2013 (during the height of the Government's overreach), the Government indicted Ron Benit and Valueland Auto Sales, Inc. on charges that they structured cash deposits in order to avoid filing Currency Transaction Reports. *Id.* at 5-6. The Government also seized $72,971 from Petitioners' bank account. *See U.S.A. v. $72,971*, S.D. Ohio Case No. 2:12-cv-00882. Following the indictment, the Government "uncovered no evidence of criminal conduct, so the Government moved to drop the charges." Pet. App. at 2. The district court granted those motions and dismissed all charges against Petitioners. *Id.* The Government also dismissed its forfeiture case and returned all of Petitioners' funds. *See U.S.A. v. $72,971*, S.D. Ohio Case No. 2:12-cv-00882.

3. "This vindication came too late" for Benit and Valueland. Pet. App. at 2. The Government's unfounded charges caused immediate and significant harm to Petitioners. Because of the indictment, Valueland has laid off more than half of its employees and has had only one profitable year since 2013. *Id.* In the three years following the indictment, Valueland lost almost three quarters of its value, and major banks closed its business and credit accounts. *Id.* "[W]ithout

access to the credit it had enjoyed pre-indictment, Valueland has been able to offer only around one-sixth of the inventory it used to" offer. *Id.*

The indictment has also negatively impacted Benit personally. The brokerage company holding his retirement savings closed his account. *Id.* Benit moved his savings to a second account, only to receive notice that this account would be closed too. *Id.* Each time he has had to liquidate his retirement accounts, he has been assessed a pre-retirement withdrawal tax. *Id.*

4. Because Benit and Valueland continue to suffer adverse consequences from the Government's unfounded charges, they filed a motion to expunge the records of their indictment. The district court noted that "the equities weighed more heavily in favor of" Petitioners and that it was "regrettable" that they continued to suffer adverse consequences. *Id.* at 9 n.1. The district court further noted that Petitioners' "prosecution was troubling in several respects," and that, "[i]f it were within the Court's authority, this would be an appropriate case to grant relief." *Id.* However, based on Sixth Circuit precedent holding that district courts do not have jurisdiction over expungement motions, the district court denied Petitioners' motion. *Id.* at 9.

5. The Sixth Circuit affirmed the district court's decision. *Id.* at 4. The Sixth Circuit held that two of its prior precedents—*United States v. Lucido*, 612 F.3d 871 (6th Cir. 2010), and *United States v. Field*, 756 F.3d 911 (6th Cir. 2014)—resolved the matter. *Id.* at 3-4. The court noted that these cases held that district

courts "lack jurisdiction over motions for expungement based on purely equitable considerations." *Id.* at 3.

Benit and Valueland now timely file this petition for certiorari.

REASONS FOR GRANTING THE PETITION

"One of this Court's primary functions is to resolve important matters on which the courts of appeals are in conflict." *Robinson v. Dep't of Educ.*, 140 S.Ct. 1440, 1442 (2020) (Thomas, J., dissenting) (quotations and alteration omitted). An entrenched circuit split exists over the scope of a district court's jurisdiction in criminal cases. The jurisdictional issue is both important and recurring. This case also offers an ideal vehicle to decide this important issue, as no other impediment exists to granting the requested relief. As such, this Court should grant certiorari.

I. The Circuit Courts Are Deeply Divided over a District Court's Jurisdiction to Consider Motions to Expunge Criminal Records When the District Court Previously Dismissed All Criminal Charges.

This case presents an ideal vehicle for this Court to address a question that divides the circuits: Whether district courts have jurisdiction to consider a motion to expunge criminal records filed after that court has dismissed all charges against the defendant. Despite prior holdings that resolution of such motions fell within a district court's inherent equitable powers, the circuit courts are now split on whether this Court's decision in *Kokkonen* regarding ancillary jurisdiction limits the district court's jurisdiction in federal

criminal proceedings. However, nothing in *Kokkonen* resolves this issue. And it is now clear that the lower courts need guidance.

Before *Kokkonen*, the general consensus was that it was "within the inherent equitable powers of a federal court to order the expungement of a record in an appropriate case." *United States v. Doe*, 556 F.2d 391, 393 (6th Cir. 1977); *see also United States v. Smith*, 940 F.2d 395 (9th Cir. 1991); *United States v. Noonan*, 906 F.2d 952 (3d Cir. 1990); *Geary v. United States*, 901 F.2d 679 (8th Cir. 1990); *United States v. Doe*, 892 F.2d 1042 (4th Cir. 1989); *United States v. Friesen*, 853 F.2d 816 (10th Cir. 1988); *Reyes v. Supervisor of Drug Enfor. Admin.*, 834 F.3d 1093 (1st Cir. 1987); *Livingston v. U.S. Dep't of Justice*, 759 F.2d 74 (D.C. Cir. 1985); *United States v. Schnitzer*, 567 F.2d 536 (2d Cir. 1977). However, since *Kokkonen*, some circuits have reversed course while others have not.

In *Kokkenen*, this Court considered whether a district court, which had previously exercised jurisdiction based on diversity, had ancillary jurisdiction to enforce a settlement agreement after the underlying case had been dismissed. 511 U.S. at 377. The Court noted that ancillary jurisdiction applied "(1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." *Id.* at 379-80 (citations omitted). The Court held that neither reason supported jurisdiction to enforce a settlement agreement. *Id.* at 380. In particular, the

Court noted that the only court order was one dismissing the case, which was "in no way flouted or imperiled by the alleged breach of the settlement agreement." *Id.* Additionally, enforcement of a settlement agreement was a question of state contract law, not federal law; therefore, the state court had jurisdiction absent an "independent basis for federal jurisdiction." *Id.* at 381-82.

The circuit courts are now split on whether district courts have jurisdiction to consider expungement motions filed after dismissal of all charges against a defendant.

A. The Second, Tenth, and D.C. Circuits properly have held that there is jurisdiction to consider a motion for expungement under principles of equity.

In *Doe v. United States*, the Second Circuit held that "expungement lies within the equitable discretion of the court." 833 F.3d at 197 (quotation omitted). In so doing, it distinguished between expunging records of *conviction* and records from a *dismissal*. *Id.* at 197-98 & n.2. As the court reasoned, "expunging a record of conviction on equitable grounds is entirely unnecessary to manage a court's proceedings, vindicate its authority, or effectuate its decrees." *Id.* at 198 (quotation and alterations omitted). However, expunging records after an order of dismissal would serve to effectuate the dismissal of all charges. *Id.* at 197 n.2. The court also questioned whether this Court's holding in *Kokkonen* even applied to criminal

cases, but noted that expungement after a dismissal would "comport" with that case nonetheless. *Id.*

The Tenth Circuit likewise holds that district courts "have the authority to [expunge records following dismissal of all charges] under their inherent equitable powers." *United States v. Trzaska*, 781 F. App'x 697, 699 (10th Cir. 2019). The court acknowledged *Kokkonen* but noted that the decision did not clearly abrogate the Tenth Circuit's prior decisions, as it did not address motions for expungement and involved a civil case. The court then held "that district courts do indeed have inherent authority to equitably expunge" records. *Id.* at 699-700 & n2. Like the Second Circuit, the Tenth Circuit recognized the "difference between expunging the arrest record of a presumably innocent person, and expunging the conviction of a person adjudged as guilty." *Id.* at 701 (quotation and emphasis omitted).

The D.C. Circuit has held "that courts have the inherent, equitable power to expunge arrest records." *Livingston v. U.S. Dep't of Justice*, 759 F.2d 74, 78 (1985). Such jurisdiction is part of the court's power to "fashion appropriate remedies to protect important rights." *Id.* (quotation omitted). The circuit also has held that district courts have jurisdiction over expungement motions in cases dismissed by the court because expungement "is reasonably necessary to give complete effect to the court's order of dismissal." *Morrow v. District of Columbia*, 417 F.2d 728, 741 (D.C. Cir. 1969). While the circuit has not revisited these holdings since *Kokkonen*, its holding that district court's have inherent power to order expungement

remains the law within the circuit. *See, e.g.*, *United States v. Hall*, Case No. 11-253-04, 2020 WL 1286386, at *1 (D.D.C. Mar. 18, 2020) ("The court may order expungement . . . in the exercise of its inherent equitable powers." (quotation omitted)).

B. Seven circuits have improperly applied to *Kokkonen* to limit district courts' jurisdiction.

As noted above, seven circuits apply *Kokkonen* to criminal cases and hold that district courts do not have jurisdiction to consider expungement motions even after the court dismisses all charges. *United States v. Coloian*, 480 F.3d 47 (1st Cir. 2007); *United States v. Dunegan*, 251 F.3d 477 (3d Cir. 2001); *United States v. Mettetal*, 714 F. App'x 230 (4th Cir. 2017); *Sealed Appellant v. Sealed Appellee*, 130 F.3d 695 (5th Cir. 1997); *United States v. Field*, 756 F.3d 911 (6th Cir. 2014); *United States v. Wahi*, 850 F.3d 296 (7th Cir. 2017); *United States v. Adalikwu*, 757 F. App'x 909 (11th Cir. 2018).

Typical of the analysis, the Sixth Circuit has held that expungement does not enable the court to manage its cases, vindicate its power, or effectuate its orders. *Lucido*, 612 F.3d at 875. The court reasoned that the "criminal cases have long since been resolved, and there is nothing left to manage, vindicate or effectuate." *Id.*; *see also Coloian*, 480 F.3d at 52 (holding that the existence and availability of defendant's "criminal records do[es] not frustrate or defeat his acquittal"); *Mettetal*, 714 F. App'x at 235 ("Equitable considerations which arise after the termination of court proceedings do not operate to vitiate decrees that went into effect

years earlier."); *Wahi*, 850 F.3d at 302 ("[E]quitable expungement is in no way essential to the conduct of federal-court business." (quotation omitted)); *Adalikwu*, 757 F. App'x at 912 (holding that expungement was not needed to manage proceedings because the defendant's case was over).

These decisions are inconsistent and cannot be reconciled with the holdings from the Second, Tenth, and D.C. Circuits. In fact, numerous courts and commentators have recognized the circuit split. The split has been acknowledged in the Eleventh and Sixth Circuits. *See Munoz v. United States*, 737 F. App'x 442, 444-45 (11th Cir. 2018) (noting that the Government "acknowledged a circuit split as to whether expungement could be ordered on equitable grounds"); *Thompson v. Rutherford County*, 318 F. App'x 387, 390 (6th Cir. 2009) (Keith, J., dissenting) (recognizing "a circuit split"). District courts within the Fourth Circuit have recognized the split. *See United States v. Colon*, E.D. Va. No. 2:90-cr-147, 2017 WL 838660, at *2 n.2 (Mar. 3, 2017); *United States v. Pritchett*, D. Md. No. CR-08-368, 2015 WL 3456825, at *1 (May 28, 2015); *United States v. Allen*, 47 F. Supp.3d 533, 539 (E.D.N.C. 2014). And numerous secondary sources have noted the circuit split. *See, e.g.*, 13 Fed. Prac. & Proc. § 3523.2 (3d ed.) ("The courts disagree, however, on whether there is ancillary jurisdiction to entertain a proceeding to expunge based solely upon equitable considerations."); Fed. Habeas Man. § 13:25 (2021) (recognizing split); Alexia L. Faraguna, *Wiping the Slate . . . Dirty: The Inadequacies of Expungement as a Solution to the Collateral Consequences of Federal Convictions*, 82 BROOK. L. REV. 961, 973-74 (2017)

("Currently, circuit courts are split as to the application of ancillary jurisdiction . . . .").

Jurisdiction and access to the courts should not depend on the circuit in which a person resides. District courts either have jurisdiction or do not have jurisdiction to consider expungement motions. This Court should grant certiorari to decide this issue.

II. The Court Should Grant Certiorari Because this Case Involves an Important and Recurring Issue Affecting the Jurisdiction of the Courts and It Is an Excellent Vehicle to Decide this Jurisdictional Question.

"[F]ederal courts have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996) (quotation omitted). Yet, in several circuits, district courts decline jurisdiction based on the circuit's improper application of ancillary jurisdiction to federal criminal cases. Because the question presented involves an important and recurring issue affecting jurisdiction and because this case is an excellent vehicle to decide this issue, this Court should grant certiorari.

A. Jurisdictional issues are both important and recurring.

"[T]he question of jurisdiction remains and is important." *United States v. Jones*, 336 U.S. 641, 666 (1949); *see also Benz v. Compania Naviera Hidalgo*, 353 U.S. 138, 142 (1957) ("We granted certiorari in order to settle the important question of jurisdiction.");

Tidewater Oil Co. v. United States, 409 U.S. 151, 153 (1972) ("Because this decision raised an important question of federal appellate jurisdiction and because a conflict among the circuits subsequently developed on this question, we granted certiorari."). Jurisdictional questions are important because federal courts have a duty to exercise "jurisdiction where jurisdiction properly exits." *Deakins v. Monaghan*, 484 U.S. 193, 202 (1988) (quotation omitted). The exercise of jurisdiction is so important that this Court has described it as "a virtually unflagging obligation." *Quackenbush*, 517 U.S. at 716.

Indeed, this Court regularly grants certiorari to address the important question of whether federal courts have jurisdiction over specific cases. *See, e.g.*, *Microsoft Corp. v. Baker*, 137 S.Ct. 1702, 1712 (2017) (noting that certiorari was granted "to resolve a Circuit conflict" over a jurisdictional question); *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160 (2016) ("We granted certiorari to resolve a disagreement among the Courts of Appeals over whether an unaccepted offer can moot a plaintiff's claim, thereby depriving federal courts of Article III jurisdiction."); *Horne v. Dep't of Agri.*, 569 U.S. 513, 523 (2013) ("We granted certiorari to determine whether the Ninth Circuit has jurisdiction to review petitioner's takings claim."); *Hinck v. United States*, 550 U.S. 501, 506 (2007) (granting certiorari when there was a circuit split over federal court jurisdiction); *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 806 (1976) (noting that the Court granted certiorari to consider the important question of whether Congress had "terminated jurisdiction to federal courts to adjudicate federal water

rights"); *Di Giovanni v. Camden Fire Ins. Ass'n*, 296 U.S. 64, 66 (1935) ("This Court granted certiorari to settle an important question of federal law affecting the jurisdiction of federal courts." (citation omitted)); *Capital Traction Co. v. Hof*, 174 U.S. 1, 4 (1899) (granting certiorari to determine "a serious and important question" regarding jurisdiction); *Ex parte Lennon*, 166 U.S. 548, 552 (1897) (having granted certiorari over whether the circuit court exceeded its jurisdiction).

The issue is also important because it is recurring. District courts across the country are regularly faced with requests to expunge the records of dismissed charges. *See, e.g.*, *Mosquera v. United States*, No. 13-mc-736, 2021 WL 2779450 (E.D.N.Y. July 2, 2021); *United States v. Alonso-Valls*, Cr. No. 02-00042-10, 2021 WL 1670471 (D.P.R. April 28, 2021); *United States v. Herndon*, No. 15-po-7969, 2021 WL 1017383 (D. Md. Mar. 17, 2021); *United States v. Robrecht*, No. 7:18-cr-0027, 2021 WL 120945 (D.W.V. Jan. 12, 2021); *United States v. Singleton*, No. 9:18-cr-773, 2020 WL 2087624 (D.S.C. April 30, 2020); *United States v. Wheeler*, No. 12-cr-138, 2019 WL 2992034 (D. Colo. July 9, 2019); *United States v. Lowell*, No. 80-cr-257, 2019 WL 1454004 (D.D.C. April 2, 2019). As these cases show, the question here will continue to recur, and absent intervention from this Court, the answer will depend on where a particular defendant resides—not on the law.

B. This is an ideal vehicle for addressing the question presented.

This case presents an ideal vehicle for addressing the question presented. First, Petitioners clearly presented the question to both the district court and court of appeals, and both courts expressly decided the question.

Second, resolution of the jurisdictional issue was outcome determinative. The district court specifically stated that it would have granted Petitioners' motion if it believed it had jurisdiction, noting that the equities favored Petitioners and alluding to the Government's misconduct. Pet. App. at 9 n.1. Further, the Sixth Circuit noted the Government's inability to uncover any evidence of wrongdoing during the prosecution of Petitioners. *Id.* at 2. Thus, this case is unlike other cases in which alterative grounds for denying expungement existed. *See, e.g.*, *Lucido*, 612 F.3d at 873 (noting that the district court denied the motion to expunge on the merits).

III. The Sixth Circuit Wrongly Determined that the District Court Did Not Have Jurisdiction to Consider Petitioners' Motion to Expunge.

Over two hundred years ago, Chief Justice John Marshall proclaimed that the "Courts [were] established for the purpose of administering real justice to individuals." *Sheehy v. Mandeville*, 11 U.S. 208, 217 (1817). Yet, here, the Sixth Circuit's jurisdictional decision constrained the district court from administering that justice to Benit and

Valueland. Unless this Court grants certiorari and reverses, injustice, not justice, will continue to prevail.

While federal courts are courts of limited jurisdiction, they do have authority over cases arising from the Constitution or federal law. *Kokkonen*, 511 U.S. at 377. And this case arose under a federal statute, specifically, 31 U.S.C. § 5324. The *federal* Government charged Benit and Valueland with violations of *federal* law in a *federal* court. To say that a federal court does not have the inherent authority to right the wrong caused by the federal Government would be a miscarriage of justice. *Cf. Doe v. Webster*, 606 F.2d 1226, 1230-31 (D.C. Cir. 1979) (noting a district court's inherent equitable powers to expunge records based on "serious governmental misbehavior").

The Sixth Circuit's application of *Kokkonen* was improper because ancillary jurisdiction primarily relates to circumstances in which federal courts have jurisdiction over state-law claims. When cases involve federal law, courts rely on their inherent equitable powers not ancillary jurisdiction, and district courts have the inherent power to order expungement. Lastly, even if *Kokkonen* applies (it does not), both purposes for ancillary jurisdiction (disposing of claims in a single court and effectuating its decrees) are present here. 511 U.S. at 379-80.

A. Ancillary jurisdiction relates to federal courts exercising jurisdiction over nonfederal claims.

Ancillary jurisdiction answers the question: "Under what circumstances may a federal court hear and

decide a state-law claim arising between citizens of the same State?" *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 370 (1978); *see also City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 164-65 (1997) (noting that the principle of ancillary jurisdiction involves "federal courts' original jurisdiction over federal questions [carrying] with it jurisdiction over state law claims that derive from a common nucleus of operative fact" (quotation omitted)). Indeed, "the very foundation of ancillary jurisdiction" is "the prevention of a conflict of authority between the state and Federal courts, and the protection and preservation of the jurisdiction of each." *Julian v. Cent. Trust Co.*, 193 U.S. 93, 113 (1904).

Kokkonen was in line with these principles, as it involved exclusively state-law claims in a diversity jurisdiction case. 511 U.S. at 376-77. Subsequent cases applying *Kokkonen* likewise dealt with whether federal courts could exercise jurisdiction over state-law claims. *See Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 30, 34 (2002) (discussing whether ancillary jurisdiction allowed removal of state-law claims to federal court); *Peacock v. Thomas*, 516 U.S. 349, 351, 354, 358-59 (1996) (discussing whether the district court had jurisdiction over state-law claims for civil conspiracy, fraudulent conveyance, and veil-piercing). However, this Court has never applied *Kokkonen* to a criminal case. And the Sixth Circuit erred in extending the reach of *Kokkonen* to exclusively *federal* issues involving the *federal* Government in *federal* court.

B. The district courts have the inherent equitable power to order expungement.

"Every court must be presumed to exercise those powers belonging to it which are necessary for the promotion of public justice . . . ." *Wetmore v. Karrick*, 205 U.S. 141, 154 (1907). In fact, "unless otherwise provided by statute, all inherent equitable powers are available [to federal courts] for the proper and complete exercise of [their] jurisdiction." *Liu v. Sec. & Exch. Comm'n*, 140 S.Ct. 1936, 1946-47 (2020) (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)); *see also United States v. Barnett*, 376 U.S. 651, 696 (1964) ("[C]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution.").

There are numerous examples of these inherent powers throughout this Court's precedents. For instance, in *Wise v. Mills*, 220 U.S. 549 (1911), and *Wise v. Henkel*, 220 U.S. 556 (1911), this Court held that "it was within the power of the court to take jurisdiction" over a petition to return a company's books and records based on the court's "inherent authority" to correct wrongs committed through the court's processes. *Henkel*, 220 U.S. at 558.

In *Hall v. Cole*, 412 U.S. 1 (1973), this Court held that, although allowance for attorney fees was generally disfavored, "federal courts, in the exercise of their equitable powers, may award attorneys' fees when the interests of justice so require." 412 U.S. at 4. The Court specifically held that "federal courts [should] not hesitate to exercise this inherent equitable power

whenever overriding considerations indicate the need for such a recovery." *Id.* at 5.

Even after *Kokkonen*, this Court held that "[a] federal court has equitable authority even after a criminal proceeding has ended, to order a law enforcement agent to turn over property it has obtained during the case to the rightful owner or his designee." *Henderson v. United States*, 575 U.S. 622, 624-25 (2015). Importantly, the Court made no mention of ancillary jurisdiction in holding that the "court has equitable power" to grant a defendant's motion to return property that was filed after the criminal proceedings had ended. *Id.* at 624, 631.

Likewise, here, the district court had the inherent equitable power to grant Petitioners' motion to expunge their records. As in *Henkel*, the Government used the court's processes to wrong Petitioners by obtaining an indictment against them despite having no evidence of criminal conduct. Pet. App. at 2. In this case and numerous others, the Government used the court's process to improperly indict small businesses on structuring charges. The Government ignored the reasons for the multiple deposits and sought forfeiture of millions of dollars of legally-sourced funds. The Government even bargained non-prosecution for the forfeiture of those funds. Thus, while expungement may not be the norm, "the interests of justice" require the federal courts to have the equitable power to grant such relief to correct the Government's misconduct and unethical behavior. *Hall*, 412 U.S. at 4; *Webster*, 606 F.2d at 1230-31.

Furthermore, if the district court in *Henderson* had jurisdiction after the criminal proceedings were closed to grant a motion to return property, then the district court here had jurisdiction to expunge Petitioners' records after the court had dismissed all charges against them. 575 U.S. at 624-25. As the D.C. Circuit held, "[t]he power to order expungement is a part of the general power of federal courts to fashion appropriate remedies to protect important legal rights." *Doe v. Webster*, 606 F.2d 1226, 1240 n.8 (D.C. Cir. 1979).

Over six years after all charges were dismissed, Petitioners continue to suffer adverse consequences from the Government's unfounded indictment. The Sixth Circuit erred in holding that the district court did not have authority to fashion an appropriate remedy to protect Petitioners.

C. Even if *Kokkonen* applies (it does not), the district court had ancillary jurisdiction over Petitioners' motion to expunge their records.

Pursuant to *Kokkonen*, federal courts may exercise ancillary jurisdiction over matters for two purposes: (1) permitting a single court to dispose of factually-interdependent claims, and (2) enabling a court to manage its proceedings, vindicate its authority, and effectuate its decrees. 511 U.S. at 379-80. Both of these circumstances apply here

This Court has noted that the factual-interdependence prong of ancillary jurisdiction "typically involves claims by a defending party haled into court against his will." *Peacock*, 516 U.S. at 355.

Additionally, the new claim must have a "factual and logical dependence on the primary lawsuit," and the primary lawsuit "must contain an independent basis for federal jurisdiction." *Id.* In essence, the basis for this prong "is the practical need to protect legal rights or effectively to resolve an entire, logically entwined lawsuit." *Id.*

All of these points are present here. Benit and Valueland were haled into court against their will and successfully defended against the Government's erroneous charges. There is no question that the district court had jurisdiction over the primary lawsuit, as it involved alleged violations of 31 U.S.C. § 5324. Petitioners' motion to expunge also depended on the original claims, as the basis for granting expungement was that Petitioners did not commit any crime and all charges against them were dismissed. Pet. App. at 2. Additionally, the Government's conduct in prosecuting Petitioners factored into the district court's determination that expungement would be proper here. *Id.* at 9 n.1. Because the basis for the motion to expunge was "logically entwined" with the original charges, the district court had ancillary jurisdiction under the first *Kokkonen* prong.

Under the second *Kokkonen* prong, courts have ancillary jurisdiction in subsequent proceedings based on "a federal court's inherent power to enforce its judgments." *Peacock*, 516 U.S. at 356. Absent such jurisdiction, "the judicial power would be incomplete and entirely inadequate." *Id.* That is what will happen here if the Sixth Circuit's determination stands. Without the authority to expunge criminal records, the

district court's order dismissing all charges against Petitioners is incomplete and inadequate. Dismissal means that there was insufficient evidence that Petitioners actually committed a crime—in fact, here, there was no evidence of any criminal conduct at all. Yet, Benit and Valueland still suffer adverse consequences as if they had been convicted of the crimes alleged in the indictment. Pet. App. at 2, 6, 9 n.1.

There is no question here that the district court had the power to dismiss all charges against Petitioners. Without the ability to remedy the harms created by the Government's unwarranted indictments, the district court's order dismissing all charges is incomplete and inadequate. Ordering expungement of Petitioners' records would aid in effectuating the district court's dismissal entry. *See Doe v. United States*, 833 F.3d 192, 197 n.2 (2d Cir. 2016) (holding that expunging records after a dismissal "appears to comport with *Kokkonen* (insofar as it applies to criminal cases) because it may serve to effectuate [that] decree"); *Morrow v. District of Columbia*, 417 F.2d 728, 741 (D.C. Cir. 1969) (holding that expungement "is reasonably necessary to give complete effect to the court's order of dismissal").

Additionally, if the district court lacks jurisdiction to consider Benit and Valueland's motion, *no other court*, state or federal, has jurisdiction to right this wrong. Such a result defeats the very purpose of the courts to administer justice. Accordingly, it is within the district court's jurisdiction to expunge and seal records after the dismissal of criminal charges.

CONCLUSION

For these reasons, the Court should grant the petition for certiorari.

Respectfully submitted,

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