No. 21-211

In the Supreme Court of the United States

VALUELAND AUTO SALES, INC., AND RON BENIT,
PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court lacked jurisdiction to entertain petitioners' motion, based solely on nonstatutory equitable grounds, to expunge the records associated with petitioners' previously dismissed indictment.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D. Ohio):

United States v. *Valueland Auto Sales, Inc.*, No. 13-cr-143 (Aug. 5, 2016)

United States Court of Appeals (6th Cir.):

United States v. *Valueland Auto Sales, Inc.*, No. 16-3984 (Apr. 28, 2017)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-4) is not published in the Federal Reporter but is reprinted at 847 Fed. Appx. 344. A prior opinion of the court of appeals is not published in the Federal Reporter but is reprinted at 687 Fed. Appx. 503. The opinion and order of the district court (Pet. App. 5-9) is not published in the Federal Supplement but is available at 2020 WL 9594416.

JURISDICTION

The judgment of the court of appeals was entered on May 13, 2021. The petition for a writ of certiorari was filed on August 11, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In 2015, upon motion of the government, the United States District Court for the Southern District of Ohio dismissed pending criminal charges against petitioners. Pet. App. 2; D. Ct. Doc. 113 (Jan. 29, 2015). Almost five years later, in 2020, petitioners filed a motion to expunge the records related to the earlier criminal proceeding. Pet. App. 3; D. Ct. Doc. 173 (May 4, 2020). The district court denied the motion. Pet. App. 5-9. The court of appeals affirmed. *Id.* at 1-4.

1. Petitioner Valueland Auto Sales is a used-automobile dealership that operates a "buy-here," "pay-here" business that markets to customers with poor credit. 687 Fed. Appx. 503, 505 (citation omitted). Petitioner Ron Benit is a co-owner. *Ibid.* Because many customers made their weekly or biweekly car payments in cash, Valueland claimed to have a company-wide policy of taking large cash payments to the bank as soon as possible, typically at the beginning and end of each day, to avoid keeping large sums of cash at the dealership. *Ibid.* Before 2009, the cumulative total of Valueland's deposits rarely exceeded $10,000 on a given day. *Ibid.*

Those deposits attracted attention from the Internal Revenue Service (IRS), which suspected Valueland of purposefully structuring cash deposits at banks to avoid the filing of currency transaction reports. See 687 Fed. Appx. at 505. Financial institutions must file such reports with the Department of the Treasury each time they engage in a currency transaction in excess of $10,000. *Ibid.* (citing 31 U.S.C. 5313). In 2010, the IRS commenced an investigation and obtained a warrant to search Valueland's premises and computers. *Ibid.*

2. In 2013, a grand jury in the Southern District of Ohio charged Valueland with 22 counts of structuring

financial transactions to evade reporting requirements, in violation of 31 U.S.C. 5324(a)(3) and (d), and 18 U.S.C. 2. Indictment 2-5. The grand jury also charged Benit with four counts of the same offense. Indictment 5-6. The grand jury subsequently returned a superseding indictment that also charged Valueland with two counts of filing false tax reports, in violation of 31 U.S.C. 5324(b)(2) and (d), 31 U.S.C. 5331 (2006), and 18 U.S.C. 2. Superseding Indictment 7-8.

In 2015, the district court granted the government's motion to dismiss 14 of the counts against Valueland and all of the counts against Benit. See 687 Fed. Appx. at 505. Valueland then entered a deferred-prosecution agreement. *Ibid.* In August 2015, at the conclusion of the period specified in the agreement, the government dismissed the remaining charges against Valueland. *Id.* at 506.

3. Valueland subsequently requested an award of attorney fees under the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, Tit. VI, § 617, 111 Stat. 2519. See 687 Fed. Appx. at 506. The district court denied the motion. *Ibid.*

The Sixth Circuit affirmed, finding that "[t]he government had a reasonable basis for pursuing this prosecution." 687 Fed. Appx. at 507. The court found that Valueland "ha[d] failed to demonstrate that the [government's] position was vexatious, frivolous, or in bad faith, and therefore is not entitled to fees." *Id.* at 508 (internal quotation marks omitted).

4. In 2020, petitioners filed a motion to expunge all government records and press releases relating to the

criminal investigation, indictment, and prosecution.[1] Pet. App. 5; D. Ct. Doc. 173. They alleged that, as a result of the (now-dismissed) indictment, banks and other institutions had refused to offer them credit lines or financial services. Pet. App. 2, 6. The district court dismissed the motion on the grounds that "'federal courts lack ancillary jurisdiction over motions for expungement that are grounded on purely equitable' grounds." *Id.* at 9 (quoting *United States* v. *Field*, 756 F.3d 911, 915 (6th Cir. 2014)).

The court of appeals affirmed in an unpublished decision. Pet. App. 1-4. The court construed its precedent to preclude a district court from entertaining a motion for expungement that is based on equitable considerations. *Id.* at 3-4 (citing *Field*, 756 F.3d at 915, and *United States* v. *Lucido*, 612 F.3d 871, 875 (6th Cir. 2010)).

ARGUMENT

Petitioners renew their contention (Pet. 18-26) that the district court had jurisdiction to entertain their motion to expunge government records of their criminal prosecution on purely equitable grounds. The decision below does not conflict with any decision of this Court or another court of appeals. This Court has repeatedly denied petitions for writs of certiorari raising similar claims. See *Doe* v. *United States*, 137 S. Ct. 2160 (2017) (No. 16-876); *Mann* v. *United States*, 577 U.S. 1030 (2015) (No. 15-245); *Sapp* v. *United States*, 569 U.S. 994 (2013) (No. 12-882);

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[1] After petitioners filed that motion, the U.S. Attorney's Office for the Southern District of Ohio removed its earlier press release announcing the government's indictment of petitioners from its website. See Gov't C.A. Br. 7 n.3.

Coloian v. *United States*, 552 U.S. 948 (2007) (No. 07-72). The same result is warranted in this case.

1. a. "Federal courts are courts of limited jurisdiction." *Kokkonen* v. *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Ibid.* (citations omitted). Nevertheless, "the doctrine of ancillary jurisdiction * * * recognizes federal courts' jurisdiction over some matters (otherwise beyond their competence) that are incidental to other matters properly before them." *Id.* at 378. In *Kokkonen*, this Court explained that its cases had sanctioned ancillary jurisdiction in only two contexts: "(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 379-380 (citations omitted).

Adhering to those limits, this Court concluded in *Kokkonen* that a district court did not possess "inherent power" to consider a particular type of claim—a lawsuit to enforce a settlement agreement that had been entered before the district court—because the claim was outside those traditional categories of ancillary jurisdiction. 511 U.S. at 377, 380 (citations omitted). The Court explained that the district court did not have ancillary jurisdiction on the theory that the initial lawsuit and breach-of-settlement suit were factually interdependent because the facts underlying the initial lawsuit and the breach-of-settlement claim were distinct. *Id.* at 380. And the Court similarly concluded that the district court lacked ancillary jurisdiction over the breach-of-settlement suit on the theory that such jurisdiction was

necessary to effectuate the court's decree in the parties' original case. *Ibid.* The Court observed that the initial decree had simply ordered "that the suit be dismissed," without making compliance with the terms of the settlement "part of the order of dismissal." *Id.* at 380-381. And it explained that the dismissal was therefore "in no way flouted or imperiled by the alleged breach of the settlement agreement." *Ibid.*

Since *Kokkonen*, this Court has explained that a "federal court has equitable authority, even after a criminal proceeding has ended, to order a law enforcement agency 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, 625-626 (2015) (citing, *inter alia*, *United States* v. *Martinez*, 241 F.3d 1329, 1331 (11th Cir. 2001)). That result accords with the Court's description of the first category of ancillary jurisdiction identified in *Kokkonen*. Because the government's seizure and retention of disputed property is itself grounded in the judicial proceedings in the underlying criminal case, see, *e.g.*, *Henderson*, 575 U.S. at 624 (seizure of firearm as condition of bail), a motion seeking the property's return is factually interdependent with that case.

b. Under the principles set forth in *Kokkonen*, the district court lacked jurisdiction to entertain petitioners' motion to expunge the records associated with their earlier criminal proceeding. While federal statutes authorize courts to expunge or correct a variety of specified types of federal records in connection with both criminal and civil proceedings under certain circumstances, no statute authorizes expungement of criminal records on purely equitable grounds. See *United States*

v. *Lucido*, 612 F.3d 871, 874 (6th Cir. 2010) (compiling federal statutes).

Nor are equitable expungement actions within either category of ancillary jurisdiction set out in *Kokkonen*. Petitioners' motion to expunge was not "factually interdependent" with the underlying criminal case because it depended on events that occurred long after the criminal case was closed. See D. Ct. Doc. 173 (petitioners' motion for miscellaneous relief, invoking events in years since dismissal of the criminal proceedings). As courts of appeals have recognized, such defendant-filed claims "turn[] on different facts" and "rest[] on different sources of authority" than the criminal proceedings themselves—namely, "a grand jury's authority to indict in the one instance and a federal court's authority to remove any record of the indictment in the other." *Lucido*, 612 F.3d at 875; see *Doe* v. *United States*, 833 F.3d 192, 198 (2d Cir. 2016) (explaining that a motion to expunge was not factually interdependent under *Kokkonen* where it "may have depended in part on facts developed in [the defendant's] prior criminal proceeding," but was also "premised on events that are unrelated to the sentencing and that transpire long after the conviction itself"), cert. denied, 137 S. Ct. 2160 (2017); *United States* v. *Coloian*, 480 F.3d 47, 50-52 (1st Cir.) (explaining that "the original claims brought before the district court in this case have nothing to do with the equitable grounds" on which a motion for expungement was based), cert. denied, 552 U.S. 948 (2007).

Nor does the second category described in *Kokkonen* apply. Because "[t]he existence and availability" of accurate records of criminal proceedings "do not frustrate or defeat" a court's ability to conduct criminal proceedings or effectuate the resulting judgments—even where

those judgments are in a defendant's favor—the power to expunge criminal records is not a necessary adjunct to courts' underlying power to conduct trials. *Coloian*, 480 F.3d at 52; see *ibid.* ("[T]he power asked for here is quite remote from what courts *require* in order to perform their functions.") (quoting *Kokkonen*, 511 U.S. at 380). Like the dismissal in *Kokkonen* itself, see 511 U.S. at 380-381, the dismissal here was not conditioned on any further activity, and the dismissal remains effective irrespective of future extrajudicial developments.

c. Petitioners observe (Pet. 20) that *Kokkonen* addressed a district court's ancillary jurisdiction over "exclusively state-law claims in a diversity jurisdiction case." But *Kokkonen* is relevant to analyzing the limits on district courts' ancillary jurisdiction generally—not just in the particular factual context in which it was decided. The decision summarized the two circumstances in which this Court has found ancillary jurisdiction to be proper, drawing its categories from cases involving federal as well as state law, in which jurisdiction over the original action rested on a variety of jurisdictional bases under federal statutes. See *Kokkonen*, 511 U.S. at 379-380. Accordingly, this Court subsequently applied *Kokkonen* to preclude ancillary jurisdiction where the original case arose under federal law, rejecting a claim of ancillary jurisdiction pressed on the asserted effect of a prior judgment entered under the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* See *Peacock* v. *Thomas*, 516 U.S. 349, 354-355 (1996) (concluding that the district court lacked jurisdiction because the case did not fall into either of the two categories *Kokkonen* described).

Although petitioners attempt to characterize *Kokkonen* as premised on the division of labor between state

and federal courts (Pet. 19-20), *Kokkonen* does not rely on such a rationale, or even discuss that issue. Rather, it emphasizes that federal courts "possess only the power authorized by Constitution and statute"; the presumption "that a cause lies outside this limited jurisdiction"; and the "burden" on the party asserting jurisdiction "of establishing the contrary." *Kokkonen*, 511 U.S. at 377; see *Peacock*, 516 U.S. at 359. Those considerations are just as applicable to jurisdiction over a non-statutory expungement request as they are to jurisdiction over the settlement-related dispute in *Kokkonen*.

Petitioners relatedly assert (Pet. 20) that "this Court has never applied *Kokkonen* to a criminal case." But nothing in *Kokkonen* indicates ancillary jurisdiction in criminal cases would involve different principles. The Court held that a district court lacked any "inherent power" to exercise jurisdiction over a claim on the ground that the claim was not authorized by any statute and fell outside the two heads of ancillary jurisdiction described above. *Kokkonen*, 511 U.S. at 377 (citation omitted). The same is true here, and *Kokkonen* thus precludes petitioners' claim.

Petitioners' survey (Pet. 21-22) of cases from the early twentieth century adds nothing to the analysis that the Court already conducted in *Kokkonen*, which surveyed and relied on this Court's earlier decisions in setting forth only two "heads" of ancillary jurisdiction. See 511 U.S. at 379-380. And petitioners identify no case that supports ancillary jurisdiction over equitable expungement claims like theirs. Rather, as *Kokkonen* explains, earlier decisions generally authorized ancillary jurisdiction only over claims that are factually interdependent with an initial lawsuit and claims over

which jurisdiction is necessary to enable a court to function successfully. *Ibid.*

2. This case does not conflict with the decision of any other court of appeals. Every other court of appeals to consider *Kokkonen*'s effect on requests to exercise ancillary jurisdiction to expunge records on purely equitable grounds has found that *Kokkonen* forecloses such jurisdiction. See *Coloian*, 480 F.3d at 52 (1st Cir.); *Doe*, 833 F.3d at 199 (2d Cir.); *United States* v. *Dunegan*, 251 F.3d 477, 479-480 (3d Cir. 2001); *United States* v. *Mettetal*, 714 Fed. Appx. 230, 235 (4th Cir. 2017); *United States* v. *Wahi*, 850 F.3d 296, 302 (7th Cir. 2017); *United States* v. *Meyer*, 439 F.3d 855, 859-860 (8th Cir. 2006); *United States* v. *Sumner*, 226 F.3d 1005, 1014 (9th Cir. 2000); *United States* v. *Adalikwu*, 757 Fed. Appx. 909, 911-912 (11th Cir. 2018) (per curiam). In addition, the Tenth Circuit has relied on its own precedent concerning courts' inherent equitable powers to reach the same result. *Tokoph* v. *United States*, 774 F.3d 1300, 1305 (2015). And the Fifth Circuit has refused a request for expungement of executive branch records of criminal proceedings, explaining that such expungement would be proper only as "a remedy for other constitutional or statutorily-created rights that have been violated by a state or other governmental agency." *Sealed Appellant* v. *Sealed Appellee*, 130 F.3d 695, 697 (1997) (emphasis omitted), cert. denied, 523 U.S. 1077 (1998).[2]

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[2] The Fifth Circuit indicated in dicta that "the court has supervisory powers" over requests "for expungement of judicial records," distinct from executive branch records. *Sealed Appellant*, 130 F.3d at 697. But the court there neither addressed *Kokkonen* nor cited any precedent for that proposition, which related to a ruling that was "not on appeal." *Id.* at 697 & n.2.

No decision identified by petitioners indicates that another circuit would have entertained their motion here. Petitioners mistakenly contend (Pet. 11-12) that the Second Circuit recognizes a district court's jurisdiction to consider a motion for expungement on equitable grounds. But in *Doe*, the court of appeals held that "the District Court *lacked* jurisdiction to consider [the defendant's] motion to expunge records of a valid conviction." 833 F.3d at 195 (emphasis added). It explained that the defendant's equitable expungement claim did not fall within either of the categories of ancillary jurisdiction identified in *Kokkonen*. *Id.* at 198-199. Although the court stated in passing that it "d[id] not view the Supreme Court's decision in *Kokkonen* as necessarily abrogating" earlier circuit precedent permitting the exercise of "ancillary jurisdiction to expunge (seal, delete) arrest records following a district court's order," it found it "unnecessary * * * to decide the issue," *id.* at 197 n.2.

Petitioners next suggest (Pet. 12) that the decision below conflicts with the Tenth Circuit's approach. But as noted above, the Tenth Circuit in *Tokoph* recognized that courts lack jurisdiction over claims like those at issue here. 774 F.3d at 1301 (affirming a district court's "conclu[sion] that it had no jurisdiction" to grant a request for expungement on purely equitable grounds). The court in *Tokoph* found "no statutory or constitutional provision * * * to support the jurisdiction of a federal court" over such a claim, and rejected the defendant's contention that the district court had "inherent equitable jurisdiction" to consider the claim. *Id.* at 1305. Petitioners' reliance (Pet. 12) on the Tenth Circuit's unpublished decision in *United States* v. *Trzaska*, 781 Fed. Appx. 697 (2019), is misplaced. Without ac-

knowledging *Tokoph*, the court of appeals there described its prior cases as "vest[ing] district courts with inherent authority to grant expungement on equitable grounds," and noted that "neither the parties nor the district court ha[d] mentioned this issue, nor ha[d] the parties asked [it] to reconsider [that] precedent." *Id.* at 699 n.2. That nonprecedential decision does not create a circuit conflict, especially because any intra-circuit disagreement between *Tokoph* and *Trzaska* would be an issue for the Tenth Circuit to resolve. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

Petitioners lastly suggest (Pet. 12-13) a conflict between the decision below and the decisions of the D.C. Circuit in *Livingston* v. *United States Department of Justice*, 759 F.2d 74, 78 (1985), and *Morrow* v. *District of Columbia*, 417 F.2d 728, 741 (1969). But, as petitioners acknowledge (Pet. 12), those decisions predate this Court's clarification of the scope of ancillary jurisdiction in *Kokkonen*. They therefore do not demonstrate that any conflict exists following *Kokkonen*'s guidance.

3. Petitioners' case would in any event be a poor vehicle for consideration of courts' jurisdiction to order expungement on equitable grounds. Even if jurisdiction existed, petitioners' claim would fail on its merits.

The courts of appeals that have proceeded to the merits of equitable expungement claims without considering *Kokkonen* have viewed expungement as appropriate only in "truly * * * extraordinary" circumstances—circumstances that go beyond simply being "impeded in finding employment." *United States* v. *Flowers*, 389 F.3d 737, 739 (7th Cir. 2004), overruled by *United States* v. *Wahi*, 850 F.3d 296, 298 (7th Cir. 2017) (rejecting *Flowers*' conclusion that inherent authority over expungement requests exists); see *Sealed Appellant*, 130

F.3d at 702 (determining that defendant's "claim[] that he is having a hard time getting a job in law enforcement" was not "an adequate showing of harm"). Thus, although the district court suggested that relief would be "appropriate" because the court considered it "regrettable" that petitioners "are suffering * * * ongoing negative consequences" from their earlier prosecution, Pet. App. 9 n.1, petitioners' assertions (see *id.* at 2-3) that financial institutions no longer wished to extend services to them would not amount to the "extraordinary" circumstances necessary to overcome "the government's interest in maintaining criminal records," *Flowers*, 389 F.3d at 740 (citation omitted), and their claim would fail on the merits.

Petitioners contend that the courts below had "inherent powers" to expunge records on the theory that "the Government used the court's processes to wrong Petitioners by obtaining an indictment against them despite having no evidence of criminal conduct." Pet. 21-23 (citing *Henderson*, 575 U.S. at 624-625). But in rejecting petitioners' motion for attorney fees, the court of appeals specifically found that "[t]he government had a reasonable basis for pursuing this prosecution" and "a reasonable expectation that the circumstantial evidence in this case was sufficient to establish not just that structuring occurred but also that Valueland carried out these payments with knowledge and intent." 687 Fed. Appx. 503, 507-508.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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