No. 21-211

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*

## REPLY BRIEF FOR PETITIONERS

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This case affords the Court an opportunity to resolve an entrenched and recognized circuit split on an important issue of federal law—whether federal district courts have jurisdiction over criminal defendants' motions to expunge their records not after conviction of a crime but *after dismissal of all criminal charges*. Three Circuits—the Second, Tenth, and District of Columbia—hold that courts have jurisdiction to consider such motions. *United States v. Trzaska*, 781 F. App'x 697 (10th Cir. 2019); *Doe v. United States*, 833 F.3d 192 (2d Cir. 2016); *Doe v. Webster*, 606 F.2d 1226 (D.C. Cir. 1979). Seven other circuits incorrectly apply this Court's ancillary jurisdiction precedents, in particular *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994), and have held that district courts do not have jurisdiction over these 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).

Notably and tellingly, in order to deny the clear circuit split and suggest that this Court previously has rejected petitions akin to this one, the Government continually addresses the wrong issue. The issue here is *not* whether courts have jurisdiction to expunge records of criminal convictions. The issue here is whether courts have jurisdiction to expunge records after dismissal of all charges. On the actual question presented, there is a clear and recognized circuit split.

The Government's other arguments against review are similarly wrong. First, the Government seeks to minimize the issue by incorrectly arguing that Petitioners are not entitled to relief even if the district court had jurisdiction. Yet, the Government's argument ignores that the district court found the circumstances warranted granting Benit and Valueland's requested relief and that the Sixth Circuit noted that the Government found no evidence of wrongdoing.

Second, the Government is likewise wrong on the underlying merits of the issue. District courts have inherent authority to consider motions to expunge, and nothing in this Court's prior cases changes that fact. Indeed, this Court's prior cases demonstrate that ancillary jurisdiction and *Kokkonen* are not even applicable to criminal cases.

Because a clear and longstanding circuit split exists on an important issue of federal court jurisdiction and because this case presents an excellent vehicle for review of that issue, this Court should grant Benit and Valueland's petition.

## I. The circuit split on the actual question presented is significant, longstanding, and acknowledged by the lower courts.

The Government's denial of the circuit split strains credulity. Indeed, the only way the Government can get around the obvious split is to change the question presented. The Government pretends that the question presented is whether district courts have jurisdiction to consider motions to expunge criminal *convictions*.

With its reframed question, the Government then asserts that there is no split with the Tenth Circuit, citing *Tokoph v. United States*, 774 F.3d 1300, 1301 (10th Cir. 2014), which dealt with a request to expunge a conviction. However, the actual question presented here is whether district courts have jurisdiction to expunge records *following dismissal of all charges*. In answering this question (the one that matters here), the Tenth Circuit has held that district courts have jurisdiction to expunge records after dismissal "under their inherent equitable powers." *Trzaska*, 781 F. App'x at 699-700 (10th Cir. 2019) (citing *United States v. Pinto*, 1 F.3d 1069 (10th Cir. 1993), and noting that "there is a large difference between expunging the *arrest record* of a presumably innocent person, and expunging *the conviction* of a person adjudged as guilty in a court of law"). Because the Tenth Circuit distinguishes between expungement following a conviction versus expungement following a dismissal, there is no intra-circuit split between *Tokoph* and *Trzaska*, as alleged by the Government. *See* BIO at 12. Rather, the Tenth Circuit's decisions in *Trzaska* and *Pinto*, which relate to expungement following a dismissal, create a split with other circuit courts.

Likewise, this distinction was squarely before the Second Circuit in *Doe v. United States*, 833 F.3d 192 (2d Cir. 2016). The district court there had held that it had jurisdiction to expunge Doe's conviction, citing to *United States v. Schnitzer*, 567 F.2d 536 (2d Cir. 1977). *Doe*, 833 F.3d at 197. The Second Circuit noted that *Schnitzer* applied only to an expungement following dismissal, not a conviction. *Id.* The Second Circuit also discussed *Kokkonen* and whether it provided a

means for jurisdiction over expungements of convictions, holding that it did not. *Id.* at 197-98. Importantly, though, the Second Circuit *did not* overrule *Schnitzer* based on *Kokkonen*; instead, the court held that *Kokkenon* did not preclude jurisdiction over motions to expunge following a dismissal of all charges. *Id.* at 197 & n.2. Because the district court had relied on *Schnitzer*, the Second Circuit's explanation that *Schnitzer* applied to dismissals only was not a passing reference to the issue at hand here but was central to the Second Circuit's holding in *Doe*.

The Government's attempt to disregard the split with the D.C. Circuit also is unavailing. While it is true that the D.C. Circuit's opinions pre-date *Kokkonen*, the reasoning within those opinions for allowing jurisdiction is in line with *Kokkonen*. In particular, the D.C. Circuit has held that district courts have jurisdiction to expunge records following a dismissal 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). Compare this holding to *Kokkonen*, which explains that ancillary jurisdiction is warranted "to enable a court to . . . effectuate its decrees." 511 U.S. at 379-80. The reasoning is the same; and therefore, the outcome would be the same. Even under *Kokkonen*, the D.C. Circuit would permit district courts to exercise jurisdiction over motions to expunge following the dismissal of all charges.

Furthermore, numerous courts have acknowledged the circuit split, along with numerous legal scholars and commentators. *See* Pet. at 14-15. As a clear

circuit split exists, the Government is plainly wrong in asserting that courts within other circuits would not have entertained Petitioners' motion. *Compare* BIO at 11 *with Trzaska*, 781 F. App'x 697; *Bulla v. United States*, 2021 WL 242149 (E.D.N.Y. Jan. 25, 2021) (entertaining motion to expunge following dismissal); *United States v. Lowell*, 2019 WL 1454004 (D.D.C. Apr. 2, 2019) (same); *United States v. Stegman*, 2016 WL 4430021 (D. Kan. Aug. 22, 2016) (same); *United States v. Brennan*, 2015 WL 2208532 (D. Colo. Apr. 27, 2015) (granting motion to expunge following dismissal); *United States v. Sahadeo*, 2011 WL 5828339 (S.D.N.Y. Nov. 17, 2011) (granting motion to expunge following dismissal).

Because access to the courts should not depend on the circuit in which a person resides, this Court should grant certiorari to resolve this clear and entrenched circuit split.

## II. This case is a good vehicle to resolve the split.

This Court routinely grants certiorari to address federal courts' jurisdiction and to resolve circuit splits on jurisdictional matters. *See* Pet. at 15-16; *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 376 (2012) (granting certiorari to resolve split over the court's jurisdiction). Furthermore, three of the four cases cited by the Government regarding prior denials of certiorari involved the Government's made-up question presented (whether courts have jurisdiction to expunge records of a conviction). *See* BIO at 4-5; *Doe*, 833 F.3d 193 (conviction); *Mann v. United States*, No. 15-235, 2015 WL 5093222, at *2 (Cert. Pet. Aug. 26, 2015) (same);

*Sapp v. United States*, No. 12-882, 2013 WL 1739666, at *1 (BIO Apr. 19, 2013) (same). While *United States v. Coloian*, 480 F.3d 47 (1st Cir. 2007), did involve expungement after an acquittal, the circuit split was less developed in 2007.

The Government also is wrong that Petitioners' claim would fail on the merits. *See* BIO at 12. The district court specifically reached the jurisdictional issue because "the equities weigh[ed] more heavily in favor of [Petitioners]." Pet. App. at 8. The district court further noted that Petitioners' "prosecution was troubling in several respects," and that it was "regrettable that [Petitioners were] suffering ongoing negative consequences from this prosecution." *Id.* at 9 n.1. The court stated that, "[i]f it were within the Court's authority, this would be an appropriate case to grant relief." *Id.*

The Government's claim that the Sixth Circuit previously found that probable cause existed is unavailing. *See* BIO at 13. First, probable cause is not remotely the same as beyond a reasonable doubt. And the Sixth Circuit recognized here that Respondent's "investigation into Benit and Valueland uncovered no evidence of criminal conduct, so the Government moved to drop the charges." Pet. App. at 2. Second, the Sixth Circuit further noted that Petitioners' vindication "came too late," and that Petitioners had suffered significantly since the indictment. *Id.*

Regardless, the district court signaled that it would grant Petitioners' motion if it had the authority to do so—making this case the perfect vehicle for review. Nothing stands in the way of reviewing the question

presented. Accordingly, because there is a circuit split on an important issue of federal jurisdiction with an excellent vehicle for review, this Court should grant certiorari.

### III. The decision below was wrong.

The Government spends the majority of its opposition incorrectly asserting that the district court did not have jurisdiction to consider Petitioners' expungement motion. *See* BIO at 5-9. However, the Government is wrong on all fronts.

First, the Government is wrong that *Kokkonen* applies to federal criminal cases. During the past twenty-six years, this Court has *never* applied *Kokkonen* to a criminal case. Pet. at 20. This is unsurprising given that ancillary jurisdiction (along with pendent jurisdiction) are the means "by which the federal courts' original jurisdiction over federal questions carries with it jurisdiction over state law claims." *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156 (1997); *Exxon Mobile Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 579 (2005) (Ginsburg, J., dissenting) ("Ancillary jurisdiction evolved primarily to protect defending parties, or others whose rights might be adversely affected if they could not air their claims in an ongoing federal-court action."). Stated another way, ancillary and pendent jurisdiction "are two species of the same generic problem: Under what circumstances may a federal court hear and decide a state-law claim arising between citizens of the same State?" *Owens Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 370 (1978).

Congress answered this question by combining this Court's ancillary and pendent jurisprudence into supplemental jurisdiction found in 28 U.S.C. § 1367. *See Artis v. District of Columbia*, 138 S. Ct. 594, 598 (2019) ("Section 1367 . . . codifies the court-developed pendent and ancillary jurisdiction doctrines under the label 'supplemental jurisdiction.'"). Importantly, supplemental jurisdiction (and therefore ancillary jurisdiction) applies only in a "*civil* action of which the district courts have original jurisdiction." 28 U.S.C. § 1367(a) (emphasis added).

Supplemental and ancillary jurisdiction do not apply to criminal cases, which fall within the "exclusive" jurisdiction of the district courts. 18 U.S.C. § 3231. Because criminal cases are within the exclusive jurisdiction of the district courts, expunging federal criminal records do not implicate state law or state-court jurisdiction (the concerns for limiting district court jurisdiction over state-law civil actions). Further, Petitioners have no remedy in state court. Taking this all into consideration supports the conclusion that this Court's ancillary jurisdiction jurisprudence is not applicable to Petitioners' motion to expunge.

Such a conclusion also leads to the Government' second error—trying to merge this Court's holding in *Henderson v. United States*, 575 U.S. 622 (2015), with *Kokkoenen*. *See* BIO at 6. In *Henderson*, this Court decided whether district courts had authority to approve a convicted felon's request to transfer a firearm to another person. 575 U.S. at 625. In answering that federal courts do have such authority,

this Court noted that federal courts have "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." *Id.* (emphasis added). And in support of this proposition, this Court cited to *United States v. Martinez*, 241 F.3d 1229 (11th Cir. 2001), *id.*, which in turn held that courts have "the power to fashion a remedy under its inherent equitable authority." *Martinez* at 1330 (quotation omitted). Hence, the holding in *Henderson* fully supports federal-court jurisdiction over Petitioners' motion.

Importantly, *Henderson* contains no discussion of *Kokkonen* or ancillary jurisdiction. *See generally* 575 U.S. 622. Likewise, *Henderson* makes no statement that permitting courts to approve a firearm transfer is factually interdependent with the criminal conviction or permits the court to function successfully. Rather, this Court specifically stated that federal courts maintain equitable authority, even after a criminal case has closed. *Id.* at 625. This is the exact authority under which Petitioners filed their motion to expunge—the Court's inherent equitable authority.

Lastly, even if *Kokkonen* and ancillary jurisdiction were applicable (they are not), the Government is wrong that the district court lacks such jurisdiction. In making this claim, the Government once again ignores that the question presented here is about a district court's authority to expunge records after *dismissal* of all charges. *See* BIO at 7. Rather, the Government focuses on whether keeping accurate records falls within either *Kokkonen* factor. *Id.*

The focus, however, should be on the dismissal, which is the court's order at issue. A dismissal means that neither the court nor a jury found the defendant guilty of any crime. A dismissal also means that there is no criminal sentence issued against the defendant. If, as here, a defendant continues to face negative circumstances as if he had been convicted of a crime, the district court should have authority to rectify this wrong. Permitting district courts to expunge records following the dismissal of all charges, enables the court to effectuate its dismissal order—*i.e.*, to restore the innocent person back to his original position.

Furthermore, just as the Government claims that the transfer of firearms to another is "grounded in the judicial proceedings in the underlying criminal case," *see* BIO at 6, so too would the expungement of those same records. In *Henderson*, there would have been no need to transfer the firearms but for the Government's indictment and subsequent conviction of Henderson. Likewise, there would be no need to expunge Petitioners' records but for the Government's unwarranted (and unsupportable) indictment of Petitioners. The reasons for expungement (the court's dismissal of all charges, the Government's abuse of structuring charges, and the negative consequences from the indictment) are factually interdependent with the underlying criminal case.

Accordingly, even if *Kokkonen* applied (it does not), the district court had jurisdiction to consider Petitioners' motion to expunge.

* * *

In sum, this case presents an opportunity to resolve a longstanding circuit split on a matter of federal importance. The Government has not identified any legitimate problem that would prevent this Court from reaching and resolving this circuit split. Because this case presents an important jurisdictional issue and provides an excellent vehicle for resolving that issue, this Court should grant Benit and Valueland's petition for a writ of *certiorari*.

Respectfully submitted,

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