No. 25-612

IN THE

Supreme Court of the United States

SCOT VAN OUDENHOVEN,

Petitioner,

v.

WISCONSIN DEPARTMENT OF JUSTICE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

REPLY IN SUPPORT OF PETITION FOR CERTIORARI

JOHN R. MONROE
Counsel of Record
JOHN MONROE LAW, P.C.
156 Robert Jones Road
Dawsonville, GA 30534
(678) 362-7650
jrm@johnmonroelaw.com

Attorney for Petitioner

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389748

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

ARGUMENT

I. The Wisconsin Department of Justice ("WDOJ") Ignores the Plain Text of the "Unless" Clause in 18 U.S.C. § 921(a)(33)(B)(ii).

18 U.S.C. § 921(a)(33)(B)(ii) provides:

> A person shall not be considered to have been convicted of [a MCDV] for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

WDOJ argues that an expungement, in order to relieve a person from the effects of being convicted of a misdemeanor crime of domestic violence ("MCDV"), *must* completely undo the conviction. The plain text of the "unless" clause of § 921(a)(33)(B)(ii) belies that argument. If an expungement completely undid an conviction, then it could not possibly "expressly provide[] that a person may not ship, transport, possess, or receive firearms." Such a provision would negate the concept of completely undoing a conviction. After all, if an expunged conviction continued to impose firearms restrictions, then the expungement could not possibly be viewed as undoing all the effects of the conviction.

II. WDOJ Fails to Recognize this Court's Interpretation of Parallel Language in the "Felon in Possession" Statute.

WDOJ downplays this Court's opinions in *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103 (1983) and *Logan v. United States*, 552 U.S. 23 (2007). In *Dickerson*, this Court ruled that an expungement does not negate a felony conviction and therefore does not disturb the federal "felon in possession" statute, 18 U.S.C. § 922(g)(1). This Court said, "Over half the states have enacted one or more statutes that may be classified as expunction provisions. . . . These statutes differ, however, in almost every particular. . . . The statutes also differ in their actual effect.") 460 U.S. at 121.

In response to *Dickerson*, Congress amended 18 U.S.C. § 921(a)(20) to provide for exceptions to a conviction, the same ones Congress later passed for 18 U.S.C. § 921(a)(33)(B)(ii).[1] In *Logan*, this Court recognized the responsive nature of the congressional action to *Dickerson.* 552 U.S. at 35. Thus, the language at issue in the present case was adopted by Congress in response to this Court's decision that expungements do not constitute exceptions to the felon in possession statute (and later, the misdemeanor crime of domestic violence statute). And Congress adopted the language making expungements exceptions to convictions, even in light of this Court's prior instruction that an expungement means something different in nearly every state (and in light of the finding that an expungement

1. The parallel language in 18 U.S.C. § 921(a)(2) and 18 U.S.C. § 921(a)(33) make interpretations of the former equally applicable to the latter.

almost never means completely undoing a conviction).

III. WDOJ Wrongly Attempts to Litigate the Validity of the Expungement

WDOJ argues that Van Oudenhoven's expungement may not have been validly issued under Wisconsin law. This argument fails for multiple reasons. First, if the State of Wisconsin disagreed in 2019 that Van Oudenhoven was not entitled to an expungement, it had 45 days from entry of the order of expungement in which to do so. Wis. Stat. §§ 808.04, 974.05; *Wisconsin v. Nunez-Rodriguez*, 2007 WI App 230. A timely notice of appeal is necessary in order to confer jurisdiction on an appellate court. Wis. Stat. § 809.10; *iddwest Env't Advocs., Inc. v. Prehn*, 2025 WI App 55. Because the State failed to appeal within the required time, the State waived its right to attack the expungement.

Second, collateral attacks on judgments are highly disfavored under Wisconsin law. *Zrimsek v. American Auto.Ins.Co.*, 8 Wis. 2d 1, 3 ("A judgment rendered by a court having jurisdiction of the parties and the subject matter, unless reversed or annulled in some proper proceeding, is not open to contradiction or impeachment . . . in any collateral action or proceeding. . . .") This is especially true where, as here in a civil proceeding, the State attempts to attack an order in a criminal proceeding.

Next, WDOJ's argument asks this Court to consider a matter that is purely a question of state law—that is, whether Wisconsin law permitted the trial court to order expungement of Van Oudenhoven's conviction under the circumstances that it did. This Court has no jurisdiction

to decide matters of state law. 28 U.S.C. § 1257. And this Court consistently holds that it does not decide questions of state law that are independent of federal law. *Glossip v. Oklahoma*, 604 U.S. 226, 243 (2025). It would be a stark departure from this doctrine for this Court to concern itself with whether Wisconsin law provided for the issuance of Van Oudenhoven's expungement in the first place.

Finally, WDOJ did not question the validity of Van Oudenhoven's expungement at the trial court. It did not question it at the Wisconsin Court of Appeals. It did not even question it at the Supreme Court of Wisconsin. Not until now, when this Court is considering the issue for *certiorari*, has WDOJ raised this issue. This Court generally will not consider an issue raised for the first time on appeal. *FDA v. R.J. Reynolds Vapor Co.*, 606 U.S. 226, 240 (2025). WDOJ has not even attempted to argue why this Court should make an exception here.

CONCLUSION

Van Oudenhoven has shown that the denial of his firearm transfer on account of federal law is inconsistent with the plain meaning of the federal statute in question and further deepens a split among the Circuits. WDOJ has not shown why this Court should not take jurisdiction of this case and issue a writ of certiorari to the Court of Appeals of Wisconsin.

Respectfully submitted,

JOHN R. MONROE
Counsel of Record
JOHN MONROE LAW, P.C.
156 Robert Jones Road
Dawsonville, GA 30534
(678) 362-7650
jrm@johnmonroelaw.com

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