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STATE OF WISCONSIN
IN SUPREME COURT

Case No. 2023AP0070-FT

SCOT VAN OUDENHOVEN,

Petitioner-Appellant-Petitioner,

v.

WISCONSIN DEPARTMENT OF
JUSTICE,

Respondent-Respondent.

APPEAL FROM A FINAL JUDGMENT OF THE
WINNEBAGO COUNTY CIRCUIT COURT, THE
HONORABLE TERESA S. BASILIERE, PRESIDING

BRIEF OF RESPONDENT-RESPONDENT
WISCONSIN DEPARTMENT OF JUSTICE

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INTRODUCTION

Scot Van Oudenhoven was convicted of a misdemeanor crime of domestic violence that would bar him from possessing a firearm, unless he qualified for an exception. *See* 18 U.S.C. § 922(g)(9). The federal definition of a misdemeanor crime of domestic violence provides that “[a] person shall not be considered to have been convicted . . . 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.” 18 U.S.C. § 921(a)(33)(B)(ii). Every court to interpret this provision—federal and state—has held that this requires an action that completely removes the effects of the conviction, and that mere removal of the record of conviction is not enough. Van Oudenhoven cites no authority holding that a Wisconsin expungement, which does not remove all the effects of a conviction, meets the federal exception. Simply put, while the record of Van Oudenhoven’s conviction was expunged, his conviction itself was not “expunged or set aside.”

STATEMENT OF THE ISSUE

Federal law bars someone convicted of a misdemeanor crime of domestic violence from possessing a firearm. While the law includes an exception for convictions that have been “expunged or set aside,” federal courts interpret this exception to require that the expungement completely remove the effects of the conviction. This Court has held that an expungement under Wisconsin law does not remove all effects of the conviction but instead merely removes the record from court files. Does Van Oudenhoven’s Wisconsin expungement fall outside the exception under federal law?

The circuit court and court of appeals answered yes.

This Court should answer yes and affirm.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is appropriate, and the decision should be published.

STATEMENT OF THE CASE

I. Van Oudenhoven was convicted of misdemeanor battery against the mother of his child, the record of which was later expunged.

On September 15, 1994, Van Oudenhoven was convicted of misdemeanor battery under Wis. Stat. § 940.19(1), case no. 94-CM-119 in Calumet County Circuit Court. (R. 8:15.) The police report indicated that he and the victim “have a baby (four weeks old together).” (R. 8:41.)

In 2019, the circuit court ordered, under Wis. Stat. § 973.015, “the clerk . . . to expunge the court’s record of the conviction.” (R. 10:3.)

II. Van Oudenhoven attempts to purchase a firearm, but DOJ blocks the sale due to his conviction.

In the 1990s, the federal government established the national instant criminal background check system (NICS) to determine “whether receipt of a firearm by a prospective transferee would violate section 922 of Title 18 or State law.” 34 U.S.C. § 40901(b)(1). The regulations implementing NICS recognize that a person may be “denied the right to obtain a firearm as a result of a NICS background check performed by the Federal Bureau of Investigation (FBI) or a state or local law enforcement agency.” 28 C.F.R. § 25.1. The Wisconsin Department of Justice is a Point of Contact under 28 C.F.R. § 25.2 for handgun transfers in the state, meaning it conducts

the background check and informs the seller whether the potential buyer is prohibited from possessing a firearm.¹

In May 2022, Van Oudenhoven attempted to purchase a firearm. (R. 8:10.) DOJ denied the purchase. (R. 8:7, 10.) Van Oudenhoven appealed the denial through DOJ's administrative process. (R. 8:7.)

At the first stage of review, DOJ sustained the denial, concluding that his conviction for battery was a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9). (R. 8:6.) Van Oudenhoven appealed DOJ's upholding of the denial under Wis. Admin. Code JUS § 10.08, arguing that DOJ erred in treating his expunged conviction as a conviction. (R. 8:4.)

DOJ again affirmed the denial at the second stage of review. (R. 8:2–3, App. 3–4.) It first noted that a misdemeanor battery conviction when the victim is the mother of the perpetrator's child qualifies as a misdemeanor crime of domestic violence. (R. 8:2, App. 3.) It then explained that an expunged conviction did not restore the right to possess a firearm because this Court holds that an expunction does not invalidate the underlying conviction. (R. 8:2–3, App. 3–4 (citing *State v. Braunschweig*, 2018 WI 113, ¶ 22, 384 Wis. 2d 742, 921 N.W.2d 199).)

III. The circuit court and court of appeals affirm DOJ's denial.

After briefing by the parties (R. 13; 15–16), the circuit court affirmed DOJ's denial of the firearm purchase in a written decision (R. 18, App. 5–8). The court first determined that Van Oudenhoven's conviction was a misdemeanor crime

¹ Van Oudenhoven had contested DOJ's authority to conduct background checks. The court of appeals held that DOJ did have such authority, *Van Oudenhoven v. DOJ*, 2024 WI App 38, ¶¶ 15–19, 413 Wis. 2d 15, 10 N.W.3d 402, (App. 16–18), and Van Oudenhoven did not raise that issue in his petition for review.

of domestic violence. (R. 18:2–3, App. 6–7.) It then held that “since the Wisconsin expungement procedure does not completely remove the consequence of the conviction, it appears to fall outside the expungement exception to the firearm restriction.” (R. 18:4, App. 8.)

The court of appeals affirmed in a published opinion. *Van Oudenhoven v. DOJ*, 2024 WI App 38, 413 Wis. 2d 15, 10 N.W.3d 402, (App. 9–23). The court began by noting that “[c]ourts interpreting 18 U.S.C. § 921(a)(33)(B)(ii) have consistently construed ‘expunged’ and ‘set aside’ synonymously,” and required that “the ‘state procedure [] completely remove all effects of the conviction at issue’ as a prerequisite to an individual being permitted to possess or receive a firearm.” *Id.* ¶ 27 (citing cases), (App. 22).

The court, following the Tenth Circuit’s decision in *Wyoming ex rel. Crank v. United States*, 539 F.3d 1236 (10th Cir. 2008), held that the meanings of “expunge” and “set aside” are nearly identical and noted that “expunge” and “expungement of record” had different definitions. “The plain meanings of the terms ‘expunge’—as opposed to the ‘expungement of record’—and ‘set aside’ indicate that the relevant state procedure must do more than delete the evidence of the underlying conviction,” but must instead remove all the effects of the conviction. *Id.* ¶ 29, (App. 22–23). In addition, a federal expungement statute—18 U.S.C. § 3607(b)—expressly states that it removes all effects of the conviction, “which comports with the plain meanings of ‘expunged’ and ‘set aside’ described above.” *Id.* ¶ 30, (App. 23–24).

The structure of the federal statute also supported this interpretation. Section 921(a)(33)(B)(ii) provides that four types of actions can negate a conviction: “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.” 18 U.S.C. § 921(a)(33)(B)(ii). However, the exception does not

apply if “the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.” *Id.* The fact that the second list does not mention set asides “suggests that Congress felt that ‘expungement’ in the ‘unless’ clause covered both ‘set asides’ and ‘expungements.’” *Id.* ¶ 31 (quoting *Crank*, 539 F.3d at 1245), (App. 24).

Because this Court has held that a Wisconsin expungement does not remove all the effects of a conviction, the court of appeals held that “DOJ was able to access his records and deny his application to purchase a handgun in Wisconsin. In short, the DOJ did not erroneously interpret Wis. Stat. § 973.015 or 18 U.S.C. § 921(a)(33)(B)(ii).” *Id.* ¶ 44, (App. 30).

This Court then accepted Van Oudenhoven’s petition for review.

STANDARD OF REVIEW

This is a judicial review under chapter 227. In an appeal of “a circuit court order reviewing an agency decision,” this Court reviews “the decision of the agency, not the circuit court.” *Lake Beulah Mgmt. Dist. v. DNR*, 2011 WI 54, ¶ 25, 335 Wis. 2d 47, 799 N.W.2d 73. Van Oudenhoven asks this Court to “set aside or modify” DOJ’s decision because he alleges that it “erroneously interpreted a provision of law and a correct interpretation compels a particular action.” Wis. Stat. § 227.57(5).

This Court’s reviews statutory interpretation issues de novo. *DOR v. River City Refuse Removal, Inc.*, 2007 WI 27, ¶ 26, 299 Wis. 2d 561, 729 N.W.2d 396. This Court “employ[s] the same methodology to interpret a federal statute as” it does when “interpret[ing] a state statute.” *Nw. Airlines, Inc. v. DOR*, 2006 WI 88, ¶ 36, 293 Wis. 2d 202, 717 N.W.2d 280. And courts no longer defer to the statutory interpretations of

administrative agencies. Wis. Stat. § 227.57(11); *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶ 108, 382 Wis. 2d 496, 914 N.W.2d 21.

ARGUMENT

Van Oudenhoven does not dispute that he was convicted of a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9), which would prohibit him from possessing a firearm. The issue here is whether the fact that the record of his conviction was expunged qualifies him for an exception under federal law, which provides that someone “shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside.” 18 U.S.C. § 921(a)(33)(B)(ii).

This Court should follow all the other courts to interpret this provision and hold that Van Oudenhoven’s expungement does not qualify for the exception because it did not remove all the effects of his conviction.

I. Van Oudenhoven is barred from possessing a firearm even though his record of conviction was expunged.

While the record of Van Oudenhoven’s conviction was expunged, expungements under Wisconsin law do not meet the definition of an “expungement” necessary to restore firearm rights under federal law.

A. All courts to address this issue have held that an expungement must completely remove the effects of a conviction.

Federal law provides that someone “shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been *expunged or set aside*.” 18 U.S.C. § 921(a)(33)(B)(ii). In defining “expunged or set aside,” federal courts hold “that Congress

intended both terms equivalently to require that a state procedure completely remove the effects of the conviction in question.” *Wyoming ex rel. Crank v. United States*, 539 F.3d 1236, 1245 (10th Cir. 2008); *Jennings v. Mukasey*, 511 F.3d 894 (9th Cir. 2007).

In the Tenth Circuit case, the State of Wyoming challenged ATF’s interpretation of the term “expunged” in section 921(a)(33)(B)(ii). *Crank*, 539 F.3d at 1238–39. The court, conducting a de novo review of the ATF interpretation, began by noting that “[t]here are two possible interpretations for the phrase ‘expunged or set aside.’” *Id.* at 1244. One was that “that Congress intended the two terms to have separate meanings,” while the other was that Congress “intended the two terms to have the same meaning and used separate terms merely to avoid potential issues of terminology created by the varying language used in the different laws of the States.” *Id.* at 1245. The court concluded that “Congress intended both terms equivalently to require that a state procedure completely remove the effects of the conviction in question.” *Id.*

The court offered two plain language reasons for its interpretation. First, Black’s Law Dictionary indicated that both terms “require a complete removal of the effects of a conviction.” *Id.* Second, the structure of the statute “suggests that Congress intended the terms to be interpreted equivalently.” *Id.* The first part of subsection 921(a)(33)(B)(ii) lists four state actions that remove disability: expunging, setting aside, pardoning, or restoring civil rights. *Id.* The second part, however, only uses three terms: pardoning, expunging, or restoring civil rights. *Id.* This showed that Congress intended the term “expunging” to include both expunging and setting aside and thus they both have the same meaning. *Id.*

The Tenth Circuit relied on the Ninth Circuit's *Jennings* decision, in which a firearms licensee challenged the ATF's denial of his renewal application based on a misdemeanor crime of domestic violence that had been expunged under California law. 511 F.3d at 896. The Ninth Circuit relied on a California decision that held the relevant statute "does not, properly speaking, 'expunge' the prior conviction." *Id.* at 898 (quoting *People v. Frawley*, 98 Cal. Rptr. 2d 555, 559 (Cal. Ct. App. 2000)). The California "statute does not purport to render the conviction a legal nullity" and "is ineffectual to avoid specified consequences of a prior conviction." *Id.* (quoting *Frawley*, 98 Cal. Rptr. 2d at 559). As a result, the Ninth Circuit held that the relief the dealer obtained under California law "did not expunge his conviction for purposes of 18 U.S.C. § 922(g)(9)." *Id.* at 899.

State courts have followed suit. The Minnesota Supreme Court looked to Black's Law Dictionary, which defines "expunge" as "[t]o remove from a record, list, or book; to erase or destroy." *Bergman v. Caulk*, 938 N.W.2d 248, 251 (Minn. 2020) (alteration in original) (quoting Black's Law Dictionary (10th ed. 2014)). The court then examined whether a trial court sealing order "removed, erased, or destroyed Bergman's conviction." *Id.* at 252. The court held that "the sealing of judicial records under inherent authority simply does not reach those records that are held in the executive branch." *Id.* Thus, "the expungement that took place in 2007 under the district court's inherent authority did not remove, erase, or destroy the executive branch records of Bergman's prior domestic assault conviction," and the "expungement by inherent authority does not by itself satisfy the federal meaning of expungement." *Id.* The Pennsylvania Commonwealth Court also held that an expungement must remove all the effects of a conviction. *Pennsylvania State Police v. Drake*, 304 A.3d 801, 807 (Pa. Commw. Ct. 2023) ("We agree with the *Crank* Court's reasoning and hold that,

under Section 921(a)(33)(B)(ii) of the FGCA, the terms ‘expunged’ and ‘set aside’ are synonymous.”).

B. Federal and state courts have correctly interpreted the plain language of 18 U.S.C. § 921(a)(33)(B)(ii) using the traditional tools of statutory interpretation.

Van Oudenhoven contends that a Wisconsin expungement satisfies a plain language reading of section 921(a)(33)(B)(ii). As an initial matter, this argument ignores that the courts that have interpreted this provision have all engaged in traditional methods of statutory interpretation to interpret the plain language. *See, e.g., State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110 (“Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes.”).

Section 921(a)(33)(B)(ii) provides that a conviction does not qualify “if the conviction has been expunged or set aside.” Put simply, the plain language requires the conviction to be expunged, not merely the record of the conviction. The term “expunge” means “[T]o remove from a record, list, or book; to erase or destroy.” *Expunge*, Black’s Law Dictionary (11th Ed. 2019). There is an alternative definition for “expungement of record,” which is defined as “[T]he removal of a conviction (esp. for a first offense) from a person’s criminal record.” *Expungement of Record*, Black’s Law Dictionary (11th Ed. 2019). The courts to address this issue have held that the fact that a record of conviction has been expunged does not mean that the conviction was expunged, *i.e.*, rendered a legal nullity or had all effects of the conviction removed.

Some states—like the federal government—may provide for the expungement of the conviction itself or provide that an expungement means there is no longer a valid conviction. Federal law has an expungement procedure for drug possession crimes that provides that “a conviction that is the subject of an expungement order under subsection (c), shall not be considered a conviction for the purpose of a disqualification or a disability imposed by law upon conviction of a crime, or for any other purpose.” 18 U.S.C. § 3607(b). That federal law defines expungements in this way supports interpreting the gun control act as requiring a similar type of expungement. And interpreting “expunged or set aside” as equivalent terms makes sense because Congress “intended the two terms to have the same meaning and used separate terms merely to avoid potential issues of terminology created by the varying language used in the different laws of the States.” *Crank*, 539 F.3d 1245.

Wisconsin, in contrast, provides that a circuit court, under certain circumstances, “may order at the time of sentencing that *the record be expunged* upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition.” Wis. Stat. § 973.015(1m)(a)1. And, under Wisconsin law, the expungement does not restore any rights or provide that it shall not be considered a conviction.

The structure of section 933(a)(33) also supports reading “expunged” to have the same meaning as “set aside.” After listing the four actions that can take a conviction outside of the statutory ban, the statute refers to “the . . . expungement” without separately listing “set aside.” 18 U.S.C. § 922(a)(33)(B)(ii). As *Crank* and the court of appeals noted, this signifies Congress’s intent that the two terms are synonymous.

In sum, the authority is unanimous in supporting DOJ's interpretation because it applies the plain language and looks to context and structure, as well as related statutes.

C. Van Oudenhoven's statutory interpretation relies on purported congressional intent rather than the plain language.

Van Oudenhoven does not cite any cases that adopt his interpretation of 18 U.S.C. § 921(a)(33)(B)(ii). Instead, he reads interpretations into cases that are not there and relies on authority that does not apply here.

Logan v. United States, 552 U.S. 23 (2007), does not support Van Oudenhoven's position. There, in dicta, the Court characterized the phrase "conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored" in section 921(a)(20) as involving actions that relieve an offender "from some or all of the consequences of his conviction." *Id.* at 26, 28 (citation omitted). The Court did not say that "some" covered all four categories—nor could it when some of the actions relieve all consequences—or that the reference to "some" applied to expungement. As the court of appeals noted, "the Court was simply identifying the general differences between those terms and a defendant who retains his or her civil rights and is 'simply left alone.'" *Van Oudenhoven*, 413 Wis. 2d 15, ¶ 26 (quoting *Logan*, 552 U.S. at 32), (App. 21). In any event, that passage was not relevant to the case's holding because none of the convictions at issue "ha[d] been expunged or set aside." *Logan*, 552 U.S. at 26. Instead, the issue was whether Logan's civil rights had been restored. *Id.* at 30.

Van Oudenhoven also uses *Logan* to argue that Congress intended to cover expungements of records when it enacted 18 U.S.C. § 921(a)(20), and ten years later enacted 18 U.S.C. § 921(a)(33)(B)(ii). He relies on *Logan* for the proposition that Congress changed these provisions in

response to the Supreme Court's decision in *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103 (1983), which held that “[w]hether one has been ‘convicted’ within the language of the gun control statutes is necessarily . . . a question of federal, not state, law, despite the fact that the predicate offense and its punishment are defined by the law of the State.” *Id.* at 112. *Dickerson* held that because the federal statute had no exception for convictions expunged under state law, the federal prohibition still applied. *Id.* at 115.

Logan recognized that Congress in “the Firearms Owners’ Protection Act (FOPA), 100 Stat. 449, . . . amended § 921(a)(20) in response to *Dickerson*’s holding that, for purposes of federal firearms disabilities, state law did not determine the present impact of a prior conviction.” *Logan*, 552 U.S. at 27–28. Section 920(a)(20) now provides that “[w]hat constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held.” 18 U.S.C. § 921(a)(20).² This is the congressional overruling of *Dickerson* that *Logan* recognized, not whether an expungement must remove all effects of a conviction. And notably, Van Oudenhoven only relies on *Logan*’s recitation of the statutory history (which does not deal with expungements) and does not rely on any other source for congressional intent.

As noted above, even if Congress intended to exclude expungements of records from the Gun Control Act, the language it used did not do so. Van Oudenhoven simply assumes that Congress intended to cover an expungement like Wisconsin’s, but *Logan* does not support that assertion. It is Van Oudenhoven not DOJ, the circuit court, or the court of appeals that is attempting “to fill in perceived gaps in what Congress enacted.” (Van Oudenhoven Br. 11.) Van Oudenhoven would like the statute to read that a conviction

² This language was not added to 18 U.S.C. § 921(a)(33).

does not qualify if the record of the conviction has been expunged, but that is not what the statute says

II. Because Wisconsin expungements do not remove all the effects of a conviction, they do not satisfy the federal exception.

Under the definition used by the federal courts, an expungement under Wisconsin law is not an “expungement” under section 921(a)(33)(B)(ii) because it does not completely remove the effects of conviction. In *Braunschweig*, this Court held that an expunged conviction is still a conviction, just with the record of that conviction removed from court files. 384 Wis. 2d 742, ¶¶ 19–24. Therefore, the person still has been “convicted” of the crime even if it has been expunged from the court records.

The *Braunschweig* court reasoned that the expunction statute has the effect of “expunging the record,” *id.* ¶ 19 (quoting Wis. Stat. § 973.015(1m)(b)), which means “the clerk of court seals the case and destroys the court records.” *Id.* The court contrasted that outcome with a sentence that is vacated, which “unlike expunction, removes the fact of conviction.” *Id.* ¶ 21. The court concluded: “Vacatur invalidates the conviction itself, whereas expunction of a conviction merely deletes the evidence of the underlying conviction from court records. Expunction, unlike vacatur, does not invalidate the conviction.” *Id.* ¶ 22. In *Braunschweig*, that holding meant that the defendant’s prior expunged conviction would be considered for purposes of sentencing for a subsequent offense. *Id.* ¶ 2.

Here, as in *Braunschweig*, Van Oudenhoven’s expungement does not completely remove the effects of his conviction under Wisconsin law. The conviction is still valid;

the records have merely been removed from the court files.³ As a result, his expungement does not satisfy the federal requirement that an expungement “completely remove the effects of the conviction in question.” *Crank*, 539 F.3d at 1245.

III. The “anti-mousetrapping” authority relied on by Van Oudenhoven does not support his argument.

Van Oudenhoven relies on authority interpreting a different statute, 18 U.S.C. § 921(a)(20). His unstated premise is that courts have read section 921(a)(20) to mean that a conviction is “expunged or set aside” if the offender’s civil rights are restored, and that this also applies to section 921(a)(33). (Van Oudenhoven Br. 18–19.) But the plain language of section 921(a)(33) prohibits that interpretation, and courts have not interpreted section 921(a)(20) the way Van Oudenhoven suggests.

The wording of section 921(a)(33)(B)(ii) is clear that a court’s expunction or setting aside of a conviction is a separate act from another branch of government’s pardon or restoration of civil rights. Section 921(a)(33)(B)(ii) excludes a conviction “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.” 18 U.S.C. § 921(a)(33)(B)(ii). The provision groups the two actions taken by courts regarding the conviction itself—“expunged or set aside”—separately from the two actions taken by other branches of government regarding the effects of a conviction—pardon or civil rights restoration.

³ Wisconsin’s criminal statute penalizing possession of a firearm by people with certain convictions likewise does not have an exception for those whose record of conviction has been expunged. *See* Wis. Stat. § 941.29(5)–(10).

The restoration of civil rights thus does not define what constitutes a qualifying expungement. Rather, it is a different act to be interpreted on its own terms. Unsurprisingly, *Crank* looked at “expunged or set aside” as a pair and held them to be equivalent; the interpretation of the other two options was not relevant to that analysis. *Crank*, 539 F.3d at 1245.

Van Oudenhoven points to authority applying section 921(a)(20), which has slightly different language and relates to the definition of a “felony conviction.”⁴ But even if the two provisions were identical, the cases he cites applying section 921(a)(20) don’t support his premise. To the contrary, *United States v. Erwin*, 902 F.2d 510, 512 (7th Cir. 1990), supports DOJ’s decision here.

In *Erwin*, the Seventh Circuit held that “[w]hen state law deems a person convicted, that is dispositive for federal purposes,” and “a federal court [need not] disregard the state’s definition of a conviction just because the state has restored any one civil right.” *Erwin*, 902 F.2d at 512. The court explained that the second sentence in section 921(a)(20) applies only when “the state sends the felon a piece of paper implying that he is no longer ‘convicted’ and that all civil rights have been restored.” *Id.* (emphasis omitted). In contrast, when “the state sends no document granting pardon or restoring rights, there is no potential for deception, and the question becomes whether the particular civil right to carry guns has been restored by law.” *Id.* at 513.

⁴ Section 921(a)(20) provides, “What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.”

Here, Van Oudenhoven received no document purporting to restore his rights or saying he was no longer convicted. Instead, he obtained an order stating that the court's record of conviction would be expunged. (R. 10:3.) At the time he received that order in 2019, this Court had made clear that the expungement of his record of conviction did not remove the fact of conviction and any attendant consequences. *Braunschweig*, 384 Wis. 2d 742, ¶¶ 21–22. Under state law, he is still considered convicted, therefore the exception in section 921(a)(33)(B)(ii) does not apply.

CONCLUSION

For the foregoing reasons, this Court should affirm DOJ's denial of the firearm purchase.

Dated this 6th day of January 2025.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 4495 words.

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 6th day of January 2025.

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