No. 15-245

In The Supreme Court of the United States

STEWART C. MANN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Write Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The issue presented is not going away. The government acknowledges this jurisdictional issue has been raised time and again, and again – and now again – since the Ninth Circuit issued its circuit-splitting decision in *United States v. Sumner*, 226 F.3d 1005 (9th Cir. 2000). Gov't Br. 4 (citing cert petitions filed in 2006, 2007, and 2013). And the government suggests the Court should deny review because it "has repeatedly denied review" in those prior cases. *Ibid.* But the recurrence of this jurisdictional issue weighs in favor of review. Cf. *Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas R. Co.*, 363 U.S. 528, 530 (1960) (granting certiorari because question about district court's jurisdiction was "both recurring and important").

Denying this petition won't make the jurisdictional issue go away. It will only prolong the confusion in the lower courts and thereby prolong the disparate treatment of individuals who seek to expunge their criminal records. See Pet. 4-6. There are at least two other cases pending that raise this same jurisdictional issue on appeal. See *United States v. Ware*, No. 15-6970 (4th Cir.) (oral argument scheduled for Dec. 8, 2015); *Doe v. United States*, No. 15-1967 (2d Cir.) (appellee's brief due Dec. 18, 2015). Thus, if the Court denies this petition and both the Second and the Fourth Circuits rule in the government's favor, the Court will likely see additional cert petitions – essentially identical to this one – based on the remaining conflicts with the Fifth, Seventh, Eleventh,

and D.C. Circuits. See Pet. 6-18. And if the government loses in the Second or the Fourth Circuit – or in some future case arising in one of the other remaining circuits – the Court will likely see the government returning as petitioner to ask the Court to resolve this same issue. By granting this petition and resolving this issue now, the Court can save everyone – especially the lower courts and the government itself – from years of effort spent struggling through these jurisdictional conflicts.

The government delves into the merits of the jurisdictional issue, contending "*Kokkonen* is fatal to petitioner's claim." Gov't Br. 4-6 (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994)). Petitioner disagrees for multiple reasons. For example: under *Kokkonen* one of the purposes of ancillary jurisdiction is "to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." 511 U.S. at 379-380. The government focuses on the court's ability to "manage its proceedings" and contends *Kokkonen* "forecloses jurisdiction" over a motion to expunge criminal records on equitable grounds because there is no connection between this motion and the district court's "ability to conduct criminal proceedings." Gov't Br. 5-7. At first glance this seems true – but it glosses over the court's sentencing power, which is the power to impose consequences for a criminal conviction. A defendant's motion to expunge his criminal record on equitable grounds presents an opportunity for the court to decide whether it will provide *relief* from

some of the collateral consequences of the defendant's conviction. Thus: "The authority to order expungement, like the ability to modify conditions of or revoke supervised release, is a natural extension of the [court's] authority to sentence in the first place." *United States v. Allen*, 57 F. Supp. 3d 533, 537 (E.D.N.C. 2014). Put another way, the power to expunge criminal records – or to refuse to expunge them – enables the court to "vindicate its authority" and to "effectuate its decrees." Therefore, under *Kokkonen* the district court has ancillary jurisdiction over a motion to expunge criminal records on equitable grounds. See *Kokkonen*, 511 U.S. at 379-380; see also *Doe v. United States*, ___ F. Supp. 3d ___, 2015 WL 2452613, at *4 n.16 (E.D.N.Y. May 21, 2015).

The above is just a partial response to the government's contention that "*Kokkonen* is fatal to petitioner's claim." These arguments should be expounded in briefing on the merits because they go to answering the question presented. Instead of denying this petition, as the government proposes, and prolonging the debate over how (or whether) *Kokkonen* applies in the context of expunging criminal records, the Court should grant this petition and settle the matter once and for all. Cf. *Brotherhood of Locomotive Engineers*, 363 U.S. at 530 (noting that recurring questions about the district court's jurisdiction warrant review).

Finally, petitioner has explained why this case is a good vehicle for resolving three intersecting conflicts

over the nature and scope of the district court's jurisdiction. Pet. 5-6, 22-26. The government claims this case is a "poor vehicle" for two reasons – but both of these reasons are specious.

First, the government claims this case is a "poor vehicle" because "petitioner's claim would fail on its merits." Gov't Br. 9-10. This puts the cart before the horse. Whether petitioner's claim would fail on its merits is distinct from whether the district court has jurisdiction to consider those merits in the first place. Cf. *Mata v. Lynch*, ___ U.S. ___, 135 S. Ct. 2150, 2156 (2015) (distinguishing between jurisdictional questions and merits questions and recognizing a court may have jurisdiction where a party's request lacks merit). Because the merits question is distinct from the jurisdictional question, the merits of petitioner's motion are irrelevant – not only to the jurisdictional question presented but also to whether this case is a good vehicle for resolving the jurisdictional question presented.

Second, the government claims this case is a "poor vehicle" because petitioner's underlying motion does not explicitly identify whether petitioner seeks to expunge judicial records, executive records, or both – making it "ambiguous." Gov't Br. 10. Here, the government misuses the word "ambiguous." Petitioner's motion is not "ambiguous," in the sense that it conveys two conflicting meanings. Petitioner's motion is simply *broad*, in the sense that it requests the expungement of records without narrowing its request to a particular type of records. Because petitioner's

motion is broadly worded – and because pro se pleadings are liberally construed, see *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972) – petitioner's motion should be construed as seeking the expungement of both judicial and executive records. This broad request makes this case a good vehicle not only for resolving the conflict over the district court's jurisdiction to expunge criminal records on equitable grounds, but also for resolving the conflict over the scope of that jurisdiction and whether it encompasses both judicial and executive records. See Pet. 5, 12-13, 17.

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

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