STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2018AP2274

DEMONTA ANTONIA HALL,

Petitioner-Respondent,

v.

WISCONSIN DEPARTMENT OF JUSTICE,

Defendant-Appellant.

APPEAL FROM A FINAL ORDER OF THE CIRCUIT COURT FOR MILWAUKEE COUNTY, THE HONORABLE WILLIAM POCAN, PRESIDING

OPENING BRIEF AND APPENDIX OF WISCONSIN DEPARTMENT OF JUSTICE

JOSHUA L. KAUL
Attorney General of Wisconsin

ANTHONY D. RUSSOMANNO
Assistant Attorney General
State Bar #1076050

Attorneys for Wisconsin DOJ

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-2238
(608) 267-2223 (Fax)
russomannoad@doj.state.wi.us

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INTRODUCTION

Demonta Hall petitioned the Wisconsin Department of Justice (DOJ) to remove information about his arrest history from Wisconsin's criminal history database. Hall was arrested for outstanding municipal warrants and also new offenses. He was not prosecuted for new offenses, but the offenses in warrant status resulted in guilt and fines. The database reflected that.

However, Hall believed he was statutorily entitled to removal of the offenses. He petitioned DOJ for removal, but DOJ denied his request. That was because the governing statutes, Wis. Stat. §§ 165.83 and 165.84, contemplate removal only in limited circumstances, and do not allow removal of arrests where guilt results for *any* offense tied to that arrest.

Hall then sought chapter 227 judicial review. The circuit court observed that DOJ's interpretation of the statutes was clear and concise and its logic was sound, but it nonetheless ordered removal of the records. That was error under the plain language of the database statutes. This Court should reverse.

STATEMENT OF THE ISSUE

The database statutes allow removal of an arrest fingerprint record when the person arrested is "released without charge, or cleared." Wis. Stat. § 165.84(1). It otherwise requires that DOJ keep the records. Here, Hall was arrested for two offenses, one of which was in warrant status. The offense in warrant status resulted in guilt. Did DOJ err when declining to remove the arrest record from the database?

The circuit court answered yes.

This Court should answer no.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

This appeal likely meets the criteria for publication, as it presents a question of first impression in the appellate courts, has arisen multiple times in the circuit courts, and is likely to reoccur.[1] Oral argument is not necessary, as the legal issues may be adequately addressed through briefing.

STATEMENT OF THE CASE

This chapter 227 judicial review concerns statutory interpretation of a database statute administered by DOJ. The database contains fingerprint arrest records for more than 1.5 million individuals. Local law enforcement submits arrests to DOJ in the form of a fingerprint card that states the offenses underlying an arrest. Law enforcement, clerks of court, and others then update DOJ on what occurs with the legal proceedings. The database information is available to law enforcement and, to some extent, the public.

I. Statutory background.

The database. The database is governed by Wis. Stat. § 165.83 and portions of Wis. Stat. § 165.84. Under those statutes, local law enforcement must obtain fingerprints and other identifying data for those "arrested or taken into custody" for "offenses." Wis. Stat. § 165.84(1). An "offense" is a defined term under the statute. It includes any felony, misdemeanor, or "ordinance" violation. Wis. Stat. § 165.83(1)(c)1.–3. The statute's coverage also includes

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[1] There are two other Milwaukee County decisions addressing similar circumstances, and those decisions came to inconsistent conclusions. The court in *Gildart v. DOJ*, (Wis. Cir. Ct. Milwaukee Cty: July 13, 2018), agreed with DOJ's interpretation (*see* R. 20:12–28); the court in *Carter v. DOJ*, (Wis. Cir. Ct. Milwaukee Cty: July 13, 2018), did not (*see* R. 22:1–10).

arrests of someone who is a "fugitive from justice." Wis. Stat. § 165.83(2)(a)4.

Although all of those categories are covered, law enforcement sometimes has discretion whether to submit the arrests in the first place. For felonies, certain listed misdemeanors, and fugitives from justice, law enforcement *must* submit fingerprints and arrest information to DOJ. Wis. Stat. § 165.84(1) (stating that law enforcement "shall" obtain the information for those categories listed in section 165.83(2)(a)). However, that mandatory category does not encompass all offenses under the statute. Wis. Stat. § 165.83(1)(c). For other "offenses," like ordinance violations and non-listed misdemeanors, law enforcement has discretion: it "may" take fingerprints and submit them to DOJ with the arrest information. *See* Wis. Stat. § 165.84(1) (stating that submission for offenses not listed in section 165.83(2)(a) is discretionary with law enforcement).

Although law enforcement has discretion whether to submit some arrests, DOJ has none on the receiving end. In all instances, DOJ "shall" accept and file the submissions from law enforcement. Wis. Stat. § 165.83(2) (stating what DOJ "shall" do regarding fingerprint arrest records under both subsections (a) and (b)). All submitted arrest records become part of the database.

Arrest records are fingerprint based, and so is the database. Thus, a fingerprint arrest card from a particular arrest is associated with the corresponding set of fingerprints in the database, if those fingerprints already exist in the database. Otherwise, a new fingerprint identity is created for the submitted fingerprints. *See* Wis. Stat. § 165.83(2).

DOJ also must collect information on what happens later: "concerning the legal action taken in connection with offenses committed . . . [through] the final discharge of the defendant." Wis. Stat. § 165.83(2)(f). Law enforcement, clerks

of court, and others are directed to supply DOJ with the information about the legal action taken. Wis. Stat. § 165.84(5). The database also includes entries from correctional facilities: inmates are fingerprinted and photographed upon entry. Wis. Stat. § 165.84(4).

In turn, DOJ is required to undertake certain tasks, including comparing the fingerprints to those on file and making data available to law enforcement agencies. Wis. Stat. § 165.83(2)(j), (n). DOJ's duties also include acting in cooperation with other agencies, tribal law enforcement, and the F.B.I. to coordinate a national system of records. Wis. Stat. § 165.83(2)(p).

In addition to making information available to law enforcement, members of the public or other governmental agencies may request history checks of the database. For a fee, members of the public may request searches of a subset of the data.[2] Wis. Stat. § 165.82(1), (2).

Removal. A person who was arrested may request the return of his fingerprint record created in connection with the arrest, if the statutory conditions are met: "Any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned upon request." Wis. Stat. § 165.84(1).

II. Hall's arrests and removal requests.

This case concerns two record removal requests by Hall, both of which turn on the same legal question. As to each arrest, Hall was convicted of a charge stemming from a municipal citation.

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[2] The public does not have access to fingerprints, social security numbers, and some other categories of data.

First, the Milwaukee Police Department transmitted to DOJ a fingerprint arrest card from a September 21, 2015, arrest of Hall. (R. 9:40.) The fingerprint card reflects that Hall was arrested for two offenses: operating while suspended and possession of an electronic weapon. (R. 9:40.) The operating while suspended offense was related to a citation in warrant status. (R. 9:51.) The Milwaukee County DA's Office elected not to prosecute the electronic weapons charge. (R. 9:43.) However, in municipal court, the operating while suspended charge resulted in a finding of guilt and a fine. (R. 9:51.)

That arrest and the actions taken were reflected in "Cycle 6" of Hall's criminal history. (R. 9:14–16.) For the electronic weapons charge, the history stated "dismissed" and "no prosecution." (R. 9:15.) For the operating while suspended charge, it reflected a municipal court conviction and fine. (R. 9:15–16.)

Second, the police transmitted another fingerprint arrest card for a January 11, 2017, arrest. (R. 9:22.) The fingerprint card reflects that Hall was again arrested for two offenses: second degree sexual assault and disorderly conduct. (R. 9:22.) The disorderly conduct offense was related to a citation in warrant status. (R. 9:36.) The Milwaukee County DA's Office elected not to prosecute the sexual assault charge. (R. 9:26.) However, in municipal court, the disorderly conduct offense resulted in a finding of guilt and a fine. (R. 9:36.)

That arrest and the actions taken were reflected in "Cycle 7" of Hall's criminal history. (R. 9:16–17.) For the sexual assault charge, the history stated "dismissed" and "no prosecution." (R. 9:16.) For the disorderly conduct charge, it reflected a municipal court conviction and fine. (R. 9:16–17.)

In October 2017, Hall requested that DOJ remove the fact that he was arrested for the electronic weapon and assault charges. (R. 9:25.) The reason given was that he had "'No Process' letter[s] from the Milwaukee County District

Attorney's Office which confirm that Mr. Hall was not prosecuted for the charges referenced in Cycles 6 and 7" for the weapon and assault offenses. (R. 9:25.) DOJ denied the request because the arrests were "not eligible for expungement pursuant to Wisconsin statute 165.84(1)," as Hall was neither "released without charge [n]or cleared" for the offenses tied to those arrests. (R. 9:29, 46, A-App. 12–13.) The response explained that "[a]ll charges on a given fingerprint card must be released or cleared for the offense to qualify for an expungement." (R. 9:29, 46.)

III. Court proceedings.

After DOJ's denial, Hall filed this chapter 227 petition for judicial review of DOJ's two final agency decisions. *See* Wis. Stat. § 227.52. (R. 1.)

The circuit court adopted Hall's statutory interpretation of Wis. Stat. § 165.84(1), and reversed and remanded. (R. 23:6–11, A-App. 6–11.) The court accepted Hall's view that there must be a "new" charge after an arrest, or else that arrest must be removed. (R. 23:8, A-App. 8.) For example, the court reasoned that "Mr. Hall was not 'subsequently charged' with operating while suspended, because he had already been previously charged and that offense was only listed due to an outstanding warrant." (R. 23:10, A-App. 10.) The court concluded that, "[t]herefore, Mr. Hall was 'released without charge'" because the municipal charge preexisted the arrest, and he was never charged with a new offense.[3] (R. 23:10, A-App. 10.) It applied the same reasoning to both fingerprint arrest cards at issue.

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[3] Hall's original request to DOJ asked to remove only the electronic weapons and sexual assault offenses (and not the municipal offenses). (R. 9:25.) However, in the circuit court, the issue addressed was whether the entire fingerprint arrest card

Although the court agreed that DOJ's "logic [was] sound" and that it provided "clear and concise" statutory interpretation, it declined to adopted DOJ's reading—that being charged at some point (before or after arrest) means the person was not released without charge. (R. 23:8, 10, A-App. 8, 10.) DOJ appealed.

STANDARD OF REVIEW

When an agency's decision is challenged under § 227.52, "an appellate court reviews the decision of the agency, not that of the circuit court." *Wis. Indus. Energy Grp., Inc. v. PSC*, 2012 WI 89, ¶ 14, 342 Wis. 2d 576, 819 N.W.2d 240.

No "deference" applies to agency interpretations of statutes. Wis. Stat. § 227.57(11); *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶ 3, 382 Wis. 2d 496, 914 N.W.2d 21. However, courts afford due-weight "respect" to the agency's views of the law, in accordance with its "experience, technical competence, and specialized knowledge." Wis. Stat. § 227.57(10); *Tetra Tech*, 382 Wis. 2d 496, ¶¶ 77–78, 108.

ARGUMENT

DOJ is entrusted with maintaining a complex database of arrest records and has properly retained Hall's arrest history under the governing statutes.

Hall bears the burden "to overturn the [agency] action," and he cannot meet it here. *Racine Educ. Ass'n v. Com'r of Ins.*, 158 Wis. 2d 175, 182, 462 N.W.2d 239 (Ct. App. 1990). DOJ's denial of Hall's removal request properly applied the governing statutes, which create a database of arrest histories, not just a list of convictions. In limited

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should be removed. As explained more below, that is because the removal statute, when triggered, operates at the fingerprint-arrest-record level. *See* Wis. Stat. § 165.84(1).

circumstances, an individual may request removal of a fingerprint record, but only when the "arrested" person is "released without charge" or "cleared." Hall was not, and so his records properly remain part of the database. The circuit court's conclusion to the contrary should be reversed.

A. DOJ's application of the database statutes is entitled to due respect.

Courts afford "due weight" to an agency's view where, as here, it is entrusted to administer a technical and complex statutory program. *Tetra Tech*, 382 Wis. 2d 496, ¶¶ 77–78, 108. As chapter 227 instructs, "due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it." Wis. Stat. § 227.57(10). Where those factors are present, a court gives "respectful, appropriate consideration to the agency's views," while still exercising its "independent judgment." *Tetra Tech*, 382 Wis. 2d 496, ¶ 78.

These factors are clearly present here. The Legislature has directed DOJ to obtain arrest and related information and maintain a large and complex database, and DOJ has done so for decades—since 1969. *See* Wis. Stat. §§ 165.83–.84 (1969). That role requires substantial specialized knowledge about law enforcement data, its effective collection and transmission, and what will "aid" law enforcement "in the performance of their official duties." *See* Wis. Stat. § 165.83(2)(a)–(p). The law concerns unique-to-law-enforcement "fingerprint records," and requires maintaining and organizing the database so that local, state, and federal law enforcement, can reliably access it. Wis. Stat. § 165.83(2)(n). The law also grants substantial discretion to DOJ. For example, it must consider what "will aid these agencies in the performance of their official duties," the specifics of which are left to DOJ's expertise. Similarly, the

statute grants broad discretion when deciding what additional information to collect and what might be "useful." Wis. Stat. § 165.83(2)(f).

Therefore, although not controlling, this Court should view DOJ's application of the law with the considerable respect it is due.

B. DOJ correctly applied the statute's language, which is further confirmed by the surrounding statutory sections.

DOJ may not remove a fingerprint arrest card unless the arrested person is released without charge or is cleared of all offenses. Hall was not.

"Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. It "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; and reasonably, to avoid absurd or unreasonable results." *Id.* ¶ 46. And language is read "where possible to give reasonable effect to every word." *Id.*

DOJ applied this record-removal language:

> *Any person arrested* or taken into custody *and subsequently released without charge, or cleared of the offense* through court proceedings, *shall have any fingerprint record taken in connection therewith returned* upon request.

Wis. Stat. § 165.84(1).

The language applies to a "person arrested" and turns on whether certain conditions come to pass: being "released without charge" or "cleared of the offense." Wis. Stat.

§ 165.84(1).[4] The removal is thus tied to the arrest, which may be for multiple offenses. And removal is all or nothing vis-à-vis an arrest: it applies to "any fingerprint record taken in connection therewith."

The surrounding subsections further illustrate how this works. The database statutes have as their core ingredients arrests and the fingerprint records created at arrest: Law enforcement must take "fingerprints" of "persons arrested" and transmit them with the arrest information, Wis. Stat. § 165.84(1), and DOJ must file those "fingerprint" records "on persons who have been arrested," Wis. Stat. § 165.83(2)(a).

That fingerprint record is something specific. As the examples in the administrative record show, it is a 10-digit fingerprint card with the person's name, arrest tracking number, arresting officer and agency, and a list of the specific offenses for which the person was arrested. (R. 9:22–23.) When the removal statute refers to a "fingerprint record taken," it is referring to that fingerprint card. Wis. Stat. § 165.84(1). It is the only thing that could be "returned" under the statutory language.

One more statutory term is worth mentioning. The circuit court asked the parties what the word "charge" meant in the phrase "released without charge." (R. 16:1.) The parties agreed that it meant a "formal accusation of an offense" or a "formal assertion of illegality." (R. 17:2; R. 20:2.) *See Charge*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/charge (last visited Feb. 12, 2019). Put differently, it means "an accusation of a wrong or offense." *Charge*, Webster's Third New International Dictionary (3rd ed. 1986).

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[4] It also applies to persons "taken into custody." Wis. Stat. § 165.84(1). Custody would be analyzed in the same way.

Thus, what "charge" means turns on what "offense" means in the statute. Here, the statute includes both criminal and municipal "offenses," and so "charge" also must refer to both. Wis. Stat. § 165.83(1)(c)3.

That is confirmed by the code. The statutes use "charge" to refer to both criminal and municipal accusations of illegality. In the criminal code, "[t]he complaint is a written statement of the essential facts constituting the offense charged." Wis. Stat. § 968.01(2). Thus, "a complaint charging a person with an offense" is the accusation that constitutes a "charge." Wis. Stat. § 968.02(1). Municipal court actions are instituted through a "citation or complaint." Wis. Stat. § 800.02(1)–(2). The chapter on municipal procedures then requires the court to inform the defendant "of each charge" at an initial appearance, and it refers to being "charged with a violation of an ordinance." Wis. Stat. § 800.035(2)(a)1., (5)(a). Thus, a "charge" includes formal assertions of illegality made in a criminal complaint or in a municipal citation or complaint.

Here, as to his two arrests, Hall was not released without charge or cleared. For one offense each time, he was cited, found guilty, and fined for municipal ordinance violations. Specifically, he was arrested on September 21, 2015, for an outstanding municipal warrant, and received a fine on September 23, 2015, for a citation for operating while suspended. (R. 9:40, 51.) Similarly, he was arrested on January 11, 2017, on a different outstanding municipal warrant, and he received a fine on February 22, 2017, for a citation for disorderly conduct. (R. 9:22, 36.)

Hall thus was neither (1) "subsequently released without charge" nor (2) "cleared." He was ineligible to be "subsequently released without charge" because he already had been charged via municipal citations. He was eligible to

be "subsequently . . . cleared," but he simply failed to be. Instead, his ordinance charges resulted in findings of guilt.

For someone like Hall, rather than require removal, the database statutes contemplate updates on "the legal action taken." Wis. Stat. §§ 165.83(2)(f), 165.84(5). That was reflected in the database: the dismissed offenses were so labeled, and the ordinance violations reflected the fines. (R. 9:15–17.)

When reaching a contrary conclusion, the circuit court adopted Hall's view that events must occur in a certain order. The Hall/circuit court view is that, after a given arrest, a "new" or "subsequent" charge must be brought. (R. 23:8, 10, A-App. 8, 10.) Under that view, if there is no "new" charge, then the fingerprint arrest card must be removed. This "new charge" concept is derived from the statute's use of the word "subsequently": Any person arrested or taken into custody and *subsequently* released without charge, or cleared of the offense through court proceedings . . . . Wis. Stat. § 165.84(1).

That interpretation is flawed. "Subsequently" does not modify the word "charge": the statute does not say a person must be "subsequently charged." Instead, it refers to being "subsequently released without charge, or cleared of the offense." That language imposes no new-charge mandate on the State, but rather imposes a release mandate on the arrestee. If he manages not to be charged or is cleared, then he qualifies. If not, then the removal sentence is simply inapplicable to him. As explained above, by the time of the arrests in question, Hall was ineligible for release without charge because he had been previously charged and so his only path was to be "cleared of the offense through court proceedings." That did not happen.

"Courts may not 'add words to a statute to give it a certain meaning.'" *Westra v. State Farm Mut. Auto. Ins. Co.*, 2013 WI App 93, ¶ 18, 349 Wis. 2d 409, 835 N.W.2d 280

(citation omitted). The Hall/circuit court view reads in language that does not exist ("subsequently charged") and so is not allowed. (R. 23:10, A-App. 10.)

It also is unworkable. Before the circuit court, DOJ pointed out the anomaly created by the Hall/circuit court view: a person who is (1) arrested; (2) then charged or cited; and (3) then found guilty, would not be entitled to remove his corresponding fingerprint arrest card from the database. However, if (1) and (2) were reversed, that person would be eligible for removal. (R. 23:10, A-App. 10.) Yet, in both instances, the person was "charged" and not "cleared" for purposes of the legal system. That anomaly is a red flag—the circuit court's reading leads to unreasonable results.

Rather, from top to bottom, the database provisions are designed to chronicle arrests and the related events: police report the arrests and the offenses underlying them, and police, courts, and other official entities update the "legal action taken," including through prison, if applicable. Wis. Stat. § 165.83(2)(f); Wis. Stat. § 165.84(1), (4)–(5). There is nothing about that system that suggests the order of a charge vis-à-vis an arrest should matter.

Other provisions confirm that it cannot matter. The statute includes coverage for a "fugitive from justice." Law enforcement "must" report an arrest of a "fugitive from justice," which DOJ "shall" file. Wis. Stat. § 165.83(2)(a)4. Indeed, Hall—who had outstanding municipal warrants—was a "fugitive" (in the dictionary sense) as to those violations. *See* Wis. Stat. § 800.02(5) (explaining process for municipal warrants, which includes "[a] command to arrest the defendant"); *Fugitive*, The American Heritage Dictionary (5th ed. 2016) ("A person who flees, especially from a legal process . . . .").

The specific term "fugitive from justice" is not defined in the statute. *See* Wis. Stat. § 165.83(2)(a)4. (simply stating

that "fugitive from justice" reporting is mandatory).[5] But, by necessity, it refers to someone who *first* was charged and *then* was arrested as a fugitive from that charge. The circuit court's reasoning does not account for that. It cannot be that the statute requires the reporting of a fugitive's arrest and then automatically allows it to be removed.

The circuit court also mentioned a second consideration, related to a "nexus." The court stated, "there must be some nexus that links the arrest and the charge beyond writing a numerical sequence on a card." (R. 23:10, A-App. 10.) The court then said that "several years as well as interceding warrants have attenuated the charge from the arrest enough that the Court may conclude that Mr. Hall was 'released without charge.'" (R. 23:10, A-App. 10.)

It is unclear what role, if any, these statements played in the court's ultimate decision. Whatever the court had in mind, it was not properly in play here. The statute contains no "nexus" or "attenuation" component. That means it was error to impose it. *See Westra*, 349 Wis. 2d 409, ¶ 18.

It also would be unworkable. The database's core ingredients are arrest fingerprint cards submitted by law enforcement, and those arrest cards state what offenses underlie the arrest. *That* is the connection that matters to the database. DOJ is a custodian of about 1.5 million distinct fingerprint identities, each of which may have multiple

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[5] The "fugitive from justice" category only affects law enforcement's obligations. It does not matter to DOJ's custodial ones. If Hall was a "fugitive from justice," then law enforcement was *required* to report his arrest. Wis. Stat. § 165.83(2)(a)4. If he was not, then law enforcement still had discretion to report his arrest for an ordinance violation. Wis. Stat. § 165.83(2)(b). Either way, once reported, it was DOJ's statutory duty to accept, file, and keep the fingerprint arrest card. Wis. Stat. § 165.83(2).

fingerprint arrest cards associated with it, potentially submitted over many decades by law enforcement throughout Wisconsin. DOJ has no practical ability to make "nexus" determinations, and it has no reason to under the statute. That topic has no place in this case.

Lastly, while the policy behind the law is for the Legislature, some context is worth mentioning. As a general matter, it is not knowable whether a particular data point among the 1.5 million distinct fingerprint identities will prove useful in the future, and the statute does not require that knowledge. Rather, it is designed, by default, to retain information.[6] Instead of restricting the database, the Legislature has chosen to deal with policy concerns in other ways. For example, Wis. Stat. § 111.335 makes it generally unlawful to discriminate against someone based on an arrest or conviction record. *See* Wis. Stat. § 111.335 (prohibiting employment decisions based on arrest or conviction records, unless an exception applies).

Further, there is nothing particularly unusual about Wisconsin's law. Like Wisconsin's statute, various states restrict the removal of arrest information, even when a particular offense was not prosecuted. To provide just a few examples: under Florida law, to seal criminal history records, a person must not have "been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest." Fla. Stat. § 943.059(1)(b)2.; *see A.J.M. v. Fla. Dep't of Law Enf't*, 15 So. 3d 707, 709–10 (Fla. Dist. Ct. App. 2009) (non-prosecuted possession charge not eligible for expungement where additional "charges [the

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[6] This is consistent with Wisconsin's public records law, which creates a "presumption of complete public access" to governmental records. Wis. Stat. § 19.31. A fingerprint arrest card is one such record. *See* Wis. Stat. § 165.82(1) (history search statute, referencing the public records law).

petitioner] was also arrested for" could lead to adjudication of guilt). Idaho, too, conditions removal of criminal history arrests on being "acquitted of all offenses arising from an arrest"; only then may the person "have the fingerprint and criminal history record taken in connection with the incident expunged." Idaho Code § 67-3004(10).

Other variations include Illinois, where a non-prosecuted offense sometimes is not expunged if there were other convictions at some point in time: "When a petitioner seeks to have a[n otherwise eligible] record of arrest expunged under this Section, and the offender has been convicted of a criminal offense, the State's Attorney may object to the expungement. . . ." 20 Ill. Comp. Stat. 2630/5.2(b)(1.5). And, in Washington State, the relevant agency may retain non-conviction information in the criminal history database if the person has a prior felony or just "has been arrested for or charged with another crime during the intervening period." Wash. Rev. Code § 10.97.060(2), (3). This is not an exhaustive list, but it is sufficient to demonstrate that Wisconsin is far from alone in limiting removal of arrests.

DOJ's reading of the statute correctly applies the statutory language and harmonizes the surrounding subsections. Because the circuit court's interpretation does not, its decision should be reversed.

CONCLUSION

This Court should reverse the circuit court and affirm DOJ's administrative decisions.

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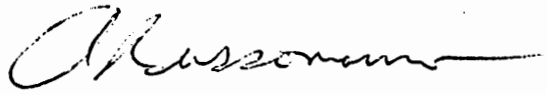
Dated this 12th day of February, 2019.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin



ANTHONY D. RUSSOMANNO
Assistant Attorney General
State Bar #1076050

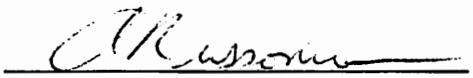
Attorneys for Wisconsin DOJ

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-2238
(608) 267-2223 (Fax)
russomannoad@doj.state.wi.us

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4504 words.

Dated this 12th day of February, 2019.



ANTHONY D. RUSSOMANNO
Assistant Attorney General

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I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

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This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

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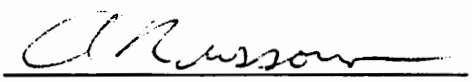

ANTHONY D. RUSSOMANNO
Assistant Attorney General

APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

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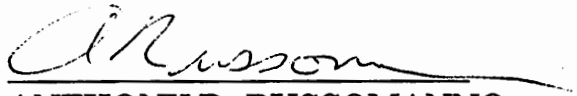


ANTHONY D. RUSSOMANNO
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(13)

I hereby certify that:

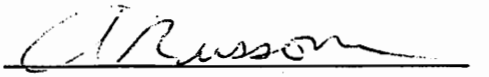
I have submitted an electronic copy of this appendix, which complies with the requirements of Wis. Stat. § 809.19(13).

I further certify that:

This electronic appendix is identical in content to the printed form of the appendix filed as of this date.

A copy of this certificate has been served with the paper copies of this appendix filed with the court and served on all opposing parties.

Dated this 12th day of February, 2019.



ANTHONY D. RUSSOMANNO
Assistant Attorney General