1   IN THE SUPREME COURT OF THE UNITED STATES

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3   JAMES D. LOGAN,   :

4   Petitioner   :

5   v.   :   No. 06-6911

6   UNITED STATES.   :

7   - - - - - - - - - - - - - - - - - x

8   Washington, D.C.

9   Tuesday, October 30, 2007

10

11   The above-entitled matter came on for oral

12 argument before the Supreme Court of the United States

13 at 11:03 a.m.

14 APPEARANCES:

15 RICHARD A. COAD, ESQ., Madison, Wis.; on behalf of the

16   Petitioner.

17 DARYL JOSEFFER, ESQ., Assistant to the Solicitor

18   General, Department of Justice, Washington, D.C.; on

19   behalf of the Respondent.

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1   C O N T E N T S

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1   P R O C E E D I N G S

2   (11:03 a.m.)

3   CHIEF JUSTICE ROBERTS: We'll hear argument

4   next in case 06-6911, Logan v. United States.

5   Mr. Coad.

6   ORAL ARGUMENT OF RICHARD A. COAD

7   ON BEHALF OF THE PETITIONER

8   MR. COAD: Mr. Chief Justice, and may it

9   please the Court:

10   The provision at issue determines which

11   convictions constitute a prior felony for imposition of

12   the Federal firearms ban and its increased penalties.

13   Its exemption clause prescribes certain ways in which a

14   conviction that otherwise meets that definition is

15   nevertheless exempt. Specifically, it looks to a

16   State's indication that an offense is deprived of any

17   continuing effect, such as whether the status of an

18   offender's civil rights are the same after a conviction

19   as they were before conviction.

20   The issue before the Court is whether the

21   statute should be read to exempt convictions for which

22   civil rights were lost and later regained while at the

23   same time not exempting a conviction for which civil

24   rights were never lost, even though both -- in the end,

25   both offenders have their civil rights following their

1   conviction.

2   Congress's underlying objective in drafting

3   the exemption clause was to ensure that Federal law

4   respected a State's considered judgment that a

5   particular offense should not subject a person to the

6   Federal firearms law. The Seventh Circuit's

7   interpretation, which counted convictions for which

8   rights were never lost, fails to respect that judgment.

9   It disregards a State's unequivocal indication to the

10   Federal statute that an offender is worthy of fully

11   participating in civic life.

12   JUSTICE GINSBURG: So if you had a

13   statute -- a State like, I'm told, Vermont, that doesn't

14   take away anyone's civil rights, not even a first-degree

15   murderer's, then that first-degree murderer would

16   be equated to someone whose civil rights were taken away

17   and then restored.

18   MR. COAD: That's correct. And I think that

19   the government points to Maine as an example where no

20   offenders lose their civil rights, but felons lose their

21   gun rights and certain misdemeanants also lose their gun

22   rights, but get that gun right back. And in States like

23   Maine and in Vermont, the "unless" clause still applies

24   and still precludes those types of convictions. So I

25   think when the government alleges that there are certain

1 anomalies that would arise from our interpretation, it

2 is simply not the case, and if they are anomalies that

3 arise from our interpretation --

4   JUSTICE GINSBURG: They're not anomalies

5 because the gun prohibition would cover them, even

6 though they never had their civil rights taken away? Is

7 that -- is that what you're saying?

8   MR. COAD: Correct. We have to read the --

9 both clauses, the exemption clause and the "unless"

10 cause. And --

11   JUSTICE SCALIA: Mr. Coad, how are -- how

12 are civil rights which have been taken away typically

13 restored? What is -- what is the process for restoring

14 them? Just if you don't commit another offense within a

15 certain number of years?

16   MR. COAD: It depends on the State. In the

17 NACDL lodging that the Court has, I believe 29 States

18 were identified as having some type of restoration

19 procedure. The majority of those, it is by automatic

20 operation of law. So there's no subsequent conditions

21 met by the offender.

22   JUSTICE KENNEDY: Well, but even -- even

23 there I assume the law waits for a certain passage of

24 time, and I would assume that there can be no felony

25 committed during that interim period or the person's

1   sentence has to be served or something. It's ongoing,

2   it's prospective. And so restoration has a real

3   component, in that -- that is not present in the statute

4   that we're faced with here.

5   MR. COAD: Well, I think that there really

6   isn't a difference between -- by operation of law, a

7   State taking away someone's rights and giving it back or

8   allowing a offender to retain civil rights --

9   JUSTICE KENNEDY: Well, it is of -- maybe no

10   difference if the operation of law is 24 hours later.

11   MR. COAD: It could be a matter --

12   JUSTICE KENNEDY: But I assume that that's

13   not the case. I assume that there's in every case, as

14   Justice Scalia's question indicates, a certain passage

15   of time that takes place.

16   MR. COAD: It could be as short as 24 hours.

17   In certain States if a probationer is convicted, rights

18   aren't taken away. But if a felony offender is

19   sentenced to even one day in jail, those rights are in

20   theory taken away for that one day and restored to that

21   offender the minute he walks out of jail.

22   JUSTICE SCALIA: Well, you -- you can say,

23   however, that -- that in the restoring situation, there

24   is at least a greater individuation of the -- of the

25   State's determination of the -- the trustworthiness of

1   the individual to be -- to be trusted with arms.

2   That is to say well, this person has not

3   committed an offense within so many years. Or maybe in

4   some States, it may be an individual determination.

5   That's why I asked you the question. Is it ever one by

6   one, you apply to have them restored?

7   MR. COAD: In a minority of States, yes.

8   JUSTICE SCALIA: Well, I mean, that's --

9   that's a totally different thing from just a gross

10   determination by a State that everybody who commits this

11   crime does not lose -- does not lose firearm rights.

12   I think it's -- it's -- there's a greater

13   degree of assurance when you're dealing with those

14   States that -- that have some degree of individuation.

15   At least this is an individual who hasn't committed an

16   offense for so many years. Or in those States where you

17   have to apply personally, I think they're different

18   situations.

19   MR. COAD: I -- I don't think they are, Your

20   Honor. As I just mentioned, there are States in which a

21   day in jail, your rights are lost and restored. And

22   there really isn't any difference between a broad

23   legislative determination by a State --

24   JUSTICE KENNEDY: Well, but I'm

25   suggesting -- and I haven't done the research -- that

7

1   that's atypical.

2   MR. COAD: No, it's not atypical. In 18 out

3   of the 29 States identified in the NACDL lodging, rights

4   are automatically restored. There's no consideration of

5   individual --

6   JUSTICE KENNEDY: I think it's atypical to

7   give a felon one day in jail.

8   MR. COAD: Well, it could be a misdemeanor.

9   There are certainly misdemeanors punishable by more than

10 two years. In fact two of the misdemeanors at question

11 here that were punishable by more than two years, my

12 client did not serve a day in jail.

13   JUSTICE SCALIA: But a misdemeanor? I see.

14   MR. COAD: So there are misdemeanors --

15   CHIEF JUSTICE ROBERTS: Well, but I

16 understand that -- I understand that it is rare for

17 misdemeanants to lose their civil rights.

18   MR. COAD: It -- that's the assumption. But

19 here we've identified in at least 12 States -- excuse

20 me, 16 States -- misdemeanors punishable by more than two

21 years or felonies, rights are retained.

22   So there are States, for example, Maryland,

23 where rights are lost for a misdemeanant punishable by

24 more than two years.

25   CHIEF JUSTICE ROBERTS: That's certainly the

1   minority approach. In most States if you are convicted

2   of a misdemeanor you do not lose civil rights, right?

3   MR. COAD: Absolutely.

4   CHIEF JUSTICE ROBERTS: So your argument, if

5   accepted, would essentially read out, or at least for the

6   majority of the States, read out subdivision

7   (a)(20)(A)(b) -- (a)(20)(B)? In other words, there's

8   coverage under the statute if you are convicted of a

9   misdemeanor and you want to say, well, if your civil

10   rights were never taken away, you shouldn't be covered.

11   Well, that would mean most misdemeanors aren't going to

12   be covered.

13   MR. COAD: Well, in, for example, Maryland,

14   that's not the case. In many -- in 12 States, it is the

15   case.

16   CHIEF JUSTICE ROBERTS: Well, if I say most

17   misdemeanors aren't going to be covered, it's not an

18   answer to say, well, here's one State where they are

19   covered. It's maybe 49 they are not.

20   MR. COAD: There really are only 16 States

21   in total that have misdemeanors punishable by more than

22   two years where rights are retained. So we're not

23   talking about a very big group to begin with. This

24   certainly is an issue on the margins.

25   JUSTICE SOUTER: Mr. Coad, may I ask you a

1   question that involves the comparison of what, for

2   shorthand purposes I'll call subsection (20) and

3   subsection (33). I take it, it is your position that --

4   and (20) applies here. But I take it that it's your

5   position that under (33), your argument could not

6   prevail because the language of (33) makes it clear that

7   there's got to be a -- in effect, a revocation of the

8   right first, before there can be a restoration within

9   the meaning of that statute?

10   You accept that, I think? Yes.

11   MR. COAD: That's correct, Your Honor.

12   JUSTICE SOUTER: Now that applies as I

13   recall to cases, or primarily to cases, in which there

14   has been a misdemeanor conviction for domestic violence,

15   is that correct?

16   MR. COAD: It only applies in that instance.

17   JUSTICE SOUTER: Okay. If your position

18   prevails, then subsection (20), which applies to more

19   serious offenses, would in effect be held to provide for

20   a restoration when, in fact, nothing had been taken

21   away.

22   Whereas under (33), which applies simply to

23   a relatively minor set of crimes in relation to (20),

24   would not provide this relief. So you would have the

25   anomaly that in the more serious cases, you would win.

1   In the less serious cases, you would lose, because the

2   statute was more onerous. That's anomalous.

3   And my point is, and this is what I want you

4   to comment on, I'll assume for the sake of argument that

5   you're pointing out an anomaly here if you just look at

6   (20) alone. But if you look at (20) and (33), by going

7   your way, we're going to create another anomaly, the

8   other anomaly being that the more serious offense or the

9   more serious offender gets better treatment than the

10   less serious offender.

11   So either way we go, there's going to be

12   some anomaly. Am I right in reading it that way?

13   MR. COAD: Well, in part. Congress was

14   specific in 1996 when it enacted the Lautenberg

15   Amendment, which was the genesis for the (a)(33) and the

16   prohibition on firearms for misdemeanor crimes of

17   domestic violence, it was very -- Congress was very

18   specific that it thought that those types of offenders

19   were particularly dangerous. Whereas when you look at

20   (a)(20), yes, it generally applies to felonies and to

21   misdemeanors punishable by more than two years.

22   But in that group of people, you had varying

23   degrees of seriousness. You could have embezzlement

24   convictions --

25   JUSTICE SOUTER: But none of them is less

11

1 serious in the classification of the crime than those

2 covered by (33), because (33) simply covers a misdemeanor

3 of domestic violence.

4   MR. COAD: I think what we have to look to

5 here is Congress's clear choice in both. In the

6 Firearm Owners' Protection Act for (a)(20), Congress

7 wanted to provide a broad exemption for individual

8 States deemed to be trustworthy. Whereas in (a)(33),

9 Congress was legislating under a very different purpose,

10 which was to target misdemeanor crimes of domestic

11 violence as particularly dangerous offenders in relation

12 to gun possession.

13   JUSTICE SOUTER: Yes, but the State's

14 judgment about trustworthiness may very well be the same

15 in each case. So the trustworthiness criterion, it

16 seems to me, is being -- would be applied differently in

17 the two cases if we take your position.

18   MR. COAD: It is. And I think that it is

19 okay for the Court to decide that because of the very

20 specific nature of only one type of offender in (a)(33),

21 which Congress decided they didn't want them to possess

22 guns. Whereas in (a)(20), the Firearm Owners'

23 Protection Act had a very different purpose. It was to

24 expand gun ownership to even felons who States determine

25 to be otherwise trustworthy.

1   CHIEF JUSTICE ROBERTS: Isn't there another

2   difficulty for you in this statutory comparison that

3   Justice Souter has noted? You're argument under (a)(20)

4   is that it would be absurd for Congress to take people

5   -- exempt people whose rights have been restored, but

6   not people whose rights were never taken away. That is

7   exactly what Congress did in (a)(33).

8   So if Congress thought it was all right even

9   in -- albeit in a different context, it seems to me to

10 be very difficult to argue that it is inherently absurd

11 to do it somewhere else.

12   MR. COAD: Our absurdity argument that we've

13 identified for (a)(20) is more particular than that. It

14 is when you look to a particular State, because again

15 we're in the realm here of delegation or at least

16 deferring to States to this trustworthy judgment. It is

17 within a particular State that a less serious offender

18 as determined by that State ends up being punished more

19 harshly than its more serious offenders.

20   Whereas with (a)(33) you don't run into

21 that problem. You accept anomalies amongst the States.

22 There are varying States -- ways to -- States handle

23 these types of issues. But with (a)(33) you have one

24 type of offender, and a State treats that offender in

25 one particular way.

1   You aren't comparing State by State. We

2   don't look to Wisconsin versus Louisiana to see an

3   absurdity. We look within a particular State, for

4   example, in Wisconsin to identify an absurdity. There

5   certainly is an acceptance when Congress decided --

6   JUSTICE SCALIA: Are you sure about that?

7   (33) applies to a number of different crimes, it seems

8   to me, within every State. Are you sure that in none of

9   those crimes the civil rights are not taken away for

10   some of them, but are taken away for others?

11   MR. COAD: The difference here, I think,

12   between (a)(20) and (a)(33) is that Congress was

13   legislating under the assumption for a felony you're

14   going to lose your civil rights. Whereas in (a)(33)

15   Your Honor is correct. Typically misdemeanors

16   punishable by nine months or up to a year, rights are

17   not lost.

18   And so I think that's the difference Your

19   Honor is getting to. I'm not sure if I answered the

20   question.

21   JUSTICE ALITO: Well, with respect to the

22   in-State anomaly that you were talking about, the

23   government argues on page 30 -- 29 and 30 of its brief

24   that there really are only a few States where this

25   exists, and even in those -- even in the States where it

1   exists, there are very significant restrictions on the

2   ability of the felon to obtain restoration of civil

3   rights.

4   Is that incorrect?

5   MR. COAD: I think it is incorrect in a

6   sense that when the government sort of narrowed the

7   number of States that we identified as being problem

8   States, what it ignores is that the Armed Career

9   Criminal Act and the prohibition against firearms goes

10 back forever really. You have to look at all of State

11 law for 1980s, '70s '60s.

12   Now, the government argued, well, right now

13 there are only these handful of States. That might be

14 correct for now. But State laws have changed over the

15 years. And so, we have to look back farther. So, it is

16 a deeper problem than the government identified.

17   And I think what's key is that we're talking

18 about Congress separating dangerous offenders from those

19 who are otherwise considered trustworthy by a particular

20 State. And this Court has recognized that principle in

21 both Caron and in Small. And when you are excluding

22 from the protections of the exemption clause offenders

23 for which a State has clearly identified as its most --

24 if you want to consider them its most trustworthy

25 offenders, that is absurd.

1   And it certainly offends the societal norm

2   that, all things being equal, we don't punish less

3   serious offenders more harshly than we do more serious

4   offenders.

5   JUSTICE GINSBURG: Well, then, maybe the

6   problem was that Congress included misdemeanants who

7   were subject to over a two-year sentence.

8   The point has been made that, on your

9   reading, that was a futile gesture, or Congress did one

10   thing that was cancelled out by someone else, by another

11   provision. That is, they put in this group of

12   misdemeanants who were subject to an over-two-year

13   sentence; but most of that group -- and in many States

14   all of them -- would not have their civil rights taken

15   away.

16   So what is left of the group that was put

17   in, misdemeanants with over-two-year sentences?

18   MR. COAD: I'm not sure I understand Your

19   Honor's question.

20   JUSTICE GINSBURG: What is the point of

21   putting that group in the statute as covered by the

22   Armed Career Criminal Act?

23   MR. COAD: Well, I -- I think the point is

24   that -- that we can't ignore Congress's clear intent to

25   exempt the -- the most trustworthy offenders in a -- in

1   a given State. And that's --

2   JUSTICE GINSBURG: But how many would be --

3   take a State that doesn't take civil rights away and gun

4   rights from misdemeanants.

5   What effect in that State would this

6   legislation have -- what effect would the provision of

7   this legislation that says, misdemeanants who are

8   subject to a two-year -- over-two-year term are covered?

9   It wouldn't be covered because the -- because they're

10   not having their civil rights taken away.

11   MR. COAD: Well, certainly, the Federal

12   statute set a two-year floor, if you will. But I don't

13   think that we should read the civil-rights-restored

14   exception in isolation. I mean we have to make sense of

15   Congress's choice to look to civil rights.

16   JUSTICE SCALIA: But does it make much

17   sense, as -- as Justice Ginsburg suggests, to read

18   (a)(20)(B) as covering almost nothing?

19   I mean, you know, why go to the trouble of

20   putting in that provision if it's only going to make a

21   difference in those -- in those very few States where --

22   well --

23   MR. COAD: Well, we're talking about very

24   few States overall. I mean even the problem we've

25   identified is certainly a limited one. We're talking

1 about a dozen States, at most.

2   And so we can say, well, you know, it

3 vitiates (B) because only two States are left that fall

4 into (B). But when we're talking about the

5 civil-rights-restoration provision as applying to rights

6 retained, we're still only talking about a dozen States.

7 So I don't think that that necessarily vitiates (B).

8   CHIEF JUSTICE ROBERTS: You phrased

9 Congress's intent as allowing an exemption for people

10 the State has found trustworthy. But I don't think

11 that's how this legislative process works.

12   You have additional punishment, and then

13 somebody says: Oh, let's not apply it to people who are

14 convicted of antitrust violations. And we say: Yeah,

15 yeah.

16   And then somebody says: Let's not apply it

17 to people whose civil rights have been restored. And

18 they say: Fine.

19   And then nobody pipes up and says: Well,

20 let's not apply it to people whose civil rights were

21 never taken away.

22   In other words, it's not an intent that is

23 not effectuated. It is just you want the intent to

24 reach more broadly.

25   MR. COAD: I think that the intent was

1   broad, and Congress was operating under the assumption

2   that rights would generally be lost for those serious

3   types of offenses that it thought it was covering in

4   (a)(20). And I think there is no evidence in the

5   Congressional Record --

6   CHIEF JUSTICE ROBERTS: So it's based on a

7   congressional mistake, in other words, about the

8   breadth, but it still doesn't --

9   MR. COAD: It is an unthought-of application

10 of the statute that -- that leads to absurd results,

11 which, if we go with the government's interpretation, we

12 frustrate Congress's intent with passing legislation.

13   JUSTICE SCALIA: Can we rewrite statutes

14 like that? Because, gee, look at this statute.

15 Congress didn't think about this, and it makes a really

16 bad result here. So we're going to add this -- this

17 new -- I don't think that that's how we operate.

18   MR. COAD: In the context of identifying an

19 absurdity, it certainly strengthens the absurdity

20 argument where --

21   JUSTICE SCALIA: It's not that absurd if

22 Congress did the same thing in (a)(33).

23   MR. COAD: It's -- it's -- it might not be

24 absurd in (a)(33). But Congress, when it showed that

25 -- when it chose to limit the concept of restoration, it

1   knew how to do so.

2   It was aware of three circuit courts

3   evaluating (a)(20) to include rights retained, and so it

4   did it there. But it didn't do it in (a)(20).

5   CHIEF JUSTICE ROBERTS: What about

6   securities law violations? (a)(20)(A) says this doesn't

7   apply if it's an antitrust violation. Now, did

8   Congress -- you could say: Well, they would have

9   applied it to securities law violations, too. It's a

10   business offense. They're not interested in that. So

11   we should read this as applying to securities law

12   violations.

13   MR. COAD: I think that's different, because

14   that's a separate type of violation; whereas, here we're

15   talking about an area that Congress clearly identified,

16   which is how a State treats the civil rights of its

17   offenders.

18   And you're also talking about, in most

19   instances, a broad, legislative determination that a

20   State decides: Well, we're not going to take them away,

21   or we're going to take them away and give them back; but

22   it has nothing to do with the offender. There is no act

23   of forgiveness on the part of the State. It is just a

24   broad, legislative rule.

25   CHIEF JUSTICE ROBERTS: That kind of begs

1   the question for you to say Congress is worried about

2   offenders States think are trustworthy. What they

3   actually said are, of course, offenders who have had

4   their civil rights restored.

5   Maybe if they had focused on the question of

6   whether or not civil rights were taken away in the first

7   place, they would have made a different judgment, as

8   they did, of course, in (a)(33).

9   MR. COAD: Well -- and, again, in (a)(33)

10   they did it for a very particular type of offender and a

11   different type of offender.

12   And I think, if you even just look at the

13   NACDL lodging, the expansiveness of it and the amount of

14   detail, none of that is in the Congressional Record.

15   It's clear that Congress didn't consider exactly what

16   was going to happen with the civil-rights-restoration

17   provision. They assumed rights would generally be

18   lost for those types of convictions.

19   CHIEF JUSTICE ROBERTS: Well, isn't -- under

20   our precedents, isn't what you just said fatal to your

21   case: In other words, Congress didn't think about this,

22   or they made a mistake in thinking about it?

23   In either case it's clear that they didn't

24   legislate with respect to it.

25   MR. COAD: I -- I think that they did

1   legislate with respect to civil rights. They just

2   didn't consider that this certain circumstance would

3   exist. And it's -- and it's absurd to conclude that a

4   less serious offender should be included within the

5   Federal ban; whereas, a more serious offender should not

6   as the State has determined.

7   And I think if you look at it this way, too,

8   the -- a State, in order to -- if the Court decides:

9   Well, sorry, you're out of luck to civil rights

10   retained, if a State wishes to have its less serious

11   offenders avoid the Federal ban, it would have to treat

12   them more harshly than it currently does in order for

13   those offenders to be treated better under Federal law.

14   And I think that that's an absurd notion.

15   And I also -- I think -- I just want to give

16   one very, what I think is the most clear example, which

17   is the State of North Dakota. We're not talking about

18   misdemeanors there. We're talking about felony

19   convictions.

20   In North Dakota, the State has decided that

21   if a felon is not sentenced to imprisonment, then the

22   felon retains his civil rights, and his right to possess

23   a firearm is restored after a short waiting period.

24   Whereas, a felon who is convicted to -- and

25   sent to prison, his rights are taken away and later

1   restored. So we have the result here of the complete

2   opposite of what North Dakota intended, which is to

3   treat the less serious offender accordingly and treat

4   the more serious offender accordingly.

5   And that's directly contrary to Congress's

6   purpose in passing the Firearm Owner's Protection Act,

7   which was in direct response to this Court's holding in

8   Dickerson, which ignored a State's expungement of -- of

9   a conviction, which, again, is another way of a State

10   identifying an individual as trustworthy.

11   JUSTICE KENNEDY: Do you know, since you

12   seem to have looked at it: In North Carolina, for the

13   person who's had his civil rights taken away, is -- is

14   there any mechanism to get them back earlier by -- by

15   applying for clemency or -- is it only through pardon

16   or --

17   MR. COAD: In North Dakota -- in North

18   Dakota you can apply for a pardon, I believe. I'd have

19   to check, but I think --

20   JUSTICE KENNEDY: That would be about the

21   only way?

22   MR. COAD: Yes. And so you're talking about

23   requiring less serious offenders to seek, in some

24   instances, extraordinary relief in order to get on the

25   same footing as more serious offenders.

1   And I -- and I would like to point to the

2   example of Wisconsin and the offenses, in particular,

3   that we're talking about here.

4   For a misdemeanor crime as a repeat

5   offender, before 2003, it was punishable by up to three

6   years. Now Wisconsin has changed that law, and it is

7   only punishable by two years. So it would be exempt

8   under (B).

9   But Wisconsin allows that type of offender

10   to retain civil rights and to retain the right to

11   possess a firearm. And, yet, under the government's

12   reading and the Seventh Circuit's reading, the Federal

13   statute would ignore that determination by the State and

14   would impose the ban on that individual and require that

15   individual to get on the same footing as a felon to

16   receive a pardon, which are generally not available to

17   misdemeanants but are readily available to -- to felons.

18   And so you are talking about a less serious

19   offender having to seek extraordinary remedies under

20   State laws -- and this, I think, is not just unique to

21   the State of Wisconsin -- in order to put themselves on

22   the same footing as a more serious offender as

23   identified by that State.

24   And if I can reserve the rest of my time?

25   Thank you.

1   CHIEF JUSTICE ROBERTS: Thank you, Mr. Coad.

2   Mr. Joseffer.

3   ORAL ARGUMENT OF DARYL JOSEFFER

4   ON BEHALF OF THE RESPONDENT

5   MR. JOSEFFER: Mr. Chief Justice, and may it

6   please the Court:

7   We just have a two points. The first is

8   that restoring a right does not mean leaving it alone,

9   and the second is that the statute is not absurd. And

10   for those reasons, Petitioner's prior offenses are

11   violent felonies under the meaning of the Act.

12   The statute is clear on this point. It says

13   "restored," and restoring a right means giving back a

14   right that had been taken away. It does not mean

15   leaving a right alone. And although words can sometimes

16   have different meanings in contexts, we are aware of no

17   context in which "restore" means "leave alone."

18   And this is certainly not such a context

19   because the statute refers to a pardon, a set-aside, an

20   expungement, or a restoration of rights. And the one

21   thing that those four items all have in common is that

22   they are ways in which a State essentially undoes its

23   conviction by relieving a defendant of some or all of

24   the consequences of that conviction.

25   Giving back rights that have been taken away

25

1 as part of the conviction has that effect. Simply

2 leaving the rights alone does not. And for that reason,

3 because the statute is so clear, the only question in

4 this case is whether the scope of the statutory

5 exemption is so absurd that this Court should take the

6 liberty to amend it in order to add an additional

7 exemption for defendants who never lost their civil

8 rights in the first place. And the Court should not

9 do so for numerous reasons. The first is that the

10 "absurd results" canon applies only if it is clear that

11 Congress could not possibly have intended the result of

12 the plain statutory text.

13   And as the Chief Justice pointed out, and

14 Justice Souter did as well, we know from the subsequent

15 enactment of the domestic violence misdemeanor provision

16 that this result is not something that's beyond

17 Congress's comprehension. Everyone agrees that Congress

18 did in fact mandate the supposedly alleged absurd

19 results in a closely analogous statute. And that's just

20 fatal to the absurdity argument.

21   JUSTICE GINSBURG: Well, everyone in this

22 case. It's -- the point might be arguable in a case that

23 involved that domestic violence statute.

24   Everyone in this case. This case doesn't

25 involve that other provision.

1   MR. JOSEFFER: Well, that's true, but my

2   point is just that on the face of the domestic violence

3   statute, and what it says is that the restoration of

4   rights exception is limited to circumstances where the

5   law of the applicable jurisdiction provides for the loss

6   of civil rights. So on the face of that provision --

7   the provision says restoration occurs only if civil

8   rights have been lost. So it's clear as day that what

9   Congress was saying there was it was mandating the

10 allegedly absurd result here in situations where rights

11 were not lost.

12   And what that means is that you can't say

13 that it's impossible that Congress --

14   JUSTICE GINSBURG: There are cases in the

15 pipeline that don't think it's as clear as day.

16   MR. JOSEFFER: There is -- in the context of

17 subsection (33) -- in the context of the domestic

18 violence misdemeanor provision --

19   JUSTICE GINSBURG: Yes.

20   MR. JOSEFFER: -- there is one circuit that

21 has applied -- that has basically overlooked the plain

22 language there, not even attempted to deal with the

23 plain language there. And it's true, and it's found

24 that that exemption was somehow satisfied in a situation

25 where civil rights were never taken away or restored.

1   But the fact that, you know, a court of appeals reached

2   that conclusion without even attempting to tangle with

3   the statutory language doesn't diminish the very

4   plain meaning --

5   JUSTICE SCALIA: What court --

6   MR. JOSEFFER: -- of the statutory language.

7   JUSTICE SCALIA: What court of appeals was

8   that? I didn't get that.

9   MR. JOSEFFER: It was the Sixth Circuit in

10   the Burgin case, I believe it's called. And the Sixth

11   Circuit there, similar to the First Circuit in

12   construing this statute, was very clear that it was just

13   skipping the language and doing what it thought Congress

14   would have wanted to do if it had thought about it.

15   But the plain language in the domestic

16   violence provision is just unmistakable because it

17   expressly refers to civil rights --

18   JUSTICE ALITO: If Congress thought about

19   the problem, what reason could they have for saying that

20   the firearms ban should apply to someone who never lost

21   his or her civil rights, but not -- but would not apply

22   to someone who had civil rights restored?

23   Automatically, let's say. Automatically and within a

24   short period of time. What rational reason could there

25   be for doing that?

1   MR. JOSEFFER: The reason is that Congress

2   was balancing two policies. On the one hand, what it

3   was looking to do in this provision was to defer to a

4   State's decision to essentially undo its conviction.

5   And that applies where rights have been taken away and

6   restored, but does not have anything to do with rights

7   being left alone.

8   On the other hand, and a couple of Justices

9   already made this point as well, Congress wanted to

10   apply the Federal firearms disability to serious

11   felonies, to felonies punishable by more than two years

12   of imprisonment, but if Congress had included a

13   retention-of-rights exemption, that would have all but

14   gutted the statutory prohibition on serious

15   misdemeanants possessing firearms. And that's why,

16   consistent with Congress's desire to get tough on

17   firearms and impose the firearms disability on serious

18   felons, it couldn't include a retention-of-rights

19   exemption.

20   So it's a situation where Congress had a

21   couple of different policies. It clearly pursued both

22   of them, and as a result, there is a seam, there is this

23   anomaly that Petitioners have pointed to, but that's an

24   inevitable consequence of Congress's desire to balance

25   these two policies. And because that's an inevitable

1 and probably foreseen result of Congress's intent, it

2 doesn't call Congress's intent into question.

3   In addition, the scope of the anomalies here

4 is really quite minor. There are -- if you -- read

5 according to its plain language, there are a few States

6 in which the Petitioner -- the anomaly the Petitioner

7 points to occurs. It's currently about three States.

8 It used to be about six States.

9   On the other hand, if you take Petitioner's

10 view, you create anomaly in a couple other States, which

11 Justice Ginsburg referred to, whereby the most serious

12 offenders, first-degree murderers, would not be treated

13 as having their civil rights restored.

14   But in all of these States, the effect of

15 the anomaly is greatly reduced by the firearms exception

16 to the retention-of-rights exemption because in --

17 Petitioner's example was North Carolina, where he said

18 that a more serious offender would be able to get

19 firearms rights back promptly. I guess what he meant by

20 "shortly" was that the offender could get them back 10

21 years after completing the sentence if he had not

22 committed further crimes.

23   So the incidence of this issue is really not

24 very significant. Instead, the real significance to

25 departing from the plain statutory language would be to

1   gut the statute as applied to misdemeanors punishable by

2   by more than two years of imprisonment, which is contrary

3   to Congress's clearly expressed intent by including such

4   misdemeanors within the scope of the statute.

5   Petitioner has also argued at length that

6   what Congress was looking at here was trustworthiness.

7   Did the State find the defendant trustworthy to possess

8   firearms? But we know, and this Court explained in

9   Caron, that that's not what this provision goes to

10   because the whole point of the Federal firearms laws is

11   to prohibit firearms possession in some circumstances

12   where at least some States were permitting it.

13   So the fact that a State would let a person

14   possess firearms is not relevant here. Instead,

15   Congress was not deferring generally to the States'

16   trustworthiness views but instead was looking to defer

17   to their specific determination to essentially undo

18   their own conviction. If a State wanted to undo its own

19   conviction, Congress was willing to give effect to that,

20   but that's the only thing it was deferring to.

21   And it also bears emphasis that Congress --

22   JUSTICE ALITO: I can understand that

23   argument where there's an individualized determination

24   about each -- each defendant, but I don't quite

25   understand it when it's a blanket restoration of rights.

1   MR. JOSEFFER: Right. That's --

2   JUSTICE ALITO: It's just a formal difference

3   then. There's no substance to it, is there?

4   MR. JOSEFFER: Well, there's still substance

5   to the fact that rights were, in fact, taken away and

6   were, in fact, restored, as opposed to someone having

7   his rights all the time. There's certainly a

8   substantive legal difference there, but as a practical

9   matter, I mean one reason that Congress may have decided

10   not to distinguish between automatic and individualized

11   restorations of rights is simply that it didn't want to

12   attempt to micromanage the States in how they would go

13   about choosing to do a pardon or a restoration of

14   rights. I mean -- and -- that's true not just with

15   respect to restoration of rights. Louisiana automatically

16   pardons most first-time offenders. As this Court

17   explained in Dickerson, of the States that expunge

18   convictions, many of them do it automatically as well

19   And so Congress from -- because of what it was doing here

20   was abrogating Dickerson, was presumably aware of these

21   points that this Court had made in Dickerson regardingthe

22   great variance in the laws and the fact some of it was

23   automatic.

24   CHIEF JUSTICE ROBERTS: Louisiana

25   automatically pardons all first-time offenders?

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1   MR. JOSEFFER: Most.

2   CHIEF JUSTICE ROBERTS: Most?

3   MR. JOSEFFER: And --

4   JUSTICE SCALIA: Not murderers, I assume?

5   MR. JOSEFFER: I don't -- I think that they

6   are not automatically pardoned.

7   JUSTICE SCALIA: No, that's --

8   MR. JOSEFFER: In fact, this practice is

9   enshrined in the Louisiana Constitution.

10   But in any event, I think the point is just

11   that Congress was going to defer to the States' decision

12   to effectively undo their convictions, but was not going

13   to micromanage how the States did it. But the most that

14   one might determine from that point of view is that if

15   you think that Congress was really thinking about an

16   individualized determination, then what that would mean

17   is that some offenders who get automatic restorations

18   are currently essentially catching a break from the fact

19   that they got an automatic one. But the fact that the

20   plain language of the statute may give some offenders a

21   break offenders a break is no reason to depart from the

22   plain language of the statute, to give other offenders a

23   break that Congress clearly did not intend.

24   And, Justice Scalia, you had asked about

25   what's a typical restoration process. At the time the

1   statute was enacted in 1986, of the States that did

2   restorations, about half of them did it automatically

3   and about half of them required individualized

4   consideration before returning at least one of the

5   rights.

6   JUSTICE KENNEDY: And in the automatic

7   category, I take it, it's usually after the sentence has

8   been served?

9   MR. JOSEFFER: There's some variance. In

10   fact, of the 50 States, follow 49 different approaches to

11   revoking and restoring civil rights. So there's an

12   exception to just about anything in this area, which

13   again underscores why anomalies are inevitable, and

14   therefore don't really call Congress's intent into

15   question.

16   But the standard practice is that after a

17   defendant has finished serving his sentence, and that

18   would include not just maybe one day in jail but also

19   the probationary period following that -- but after the

20   defendant has finished serving his sentence, if

21   restoration is automatic, it will either be at the

22   conclusion of the sentence or at some time period

23   thereafter, which in some instances can be significantly

24   thereafter.

25   JUSTICE STEVENS: At any time in

1   consideration of these statutes did Congress consider,

2   to your knowledge, perhaps making the test be the length

3   of the actual sentence served rather than eligibility

4   for different kinds of offenses. Because it seems to me

5   one normal way of differentiatingbetween those who are

6   most trustworthy and those less trustworthy would be by

7   looking at the actual sentence served.

8   MR. JOSEFFER: I think that's true. I guess

9   there are two parts to that. One is that, I mean, the

10   provisions at issue here about the length of sentence

11   served, were in the statute before this amendment was

12   made. They were in the statute before 1986. So they're

13   not directly relevant to the intent of the '86 Congress.

14   But I'm not aware of -- I mean, of legislative history

15   predating 1986 in which Congress looked at the length as

16   opposed to the maximum term. And also, one thing that

17   reflects is that what Congress was not doing here was

18   just looking to defer to the States' trustworthiness

19   determinations as this Court explained in Caron. The

20   whole point of this law was to get tougher on gun crime

21   than many of the States were at the time.

22   If the Court has no further questions --

23   CHIEF JUSTICE ROBERTS: Thank you,

24   Mr. Joseffer.

25   Mr. Coad, you have three minutes remaining.

1   REBUTTAL ARGUMENT OF RICHARD A. COAD

2   ON BEHALF OF THE PETITIONER

3   MR. COAD: Thank you, Your Honor.

4   First I would like to respond to my

5   colleague's last point. He speculates that -- about

6   legislative history and I think actually it is the exact

7   -- exact opposite. Congress enacted the Firearm Owners

8   Protection Act to broaden exemptions to the gun control

9   act. There's no question about that, and it did so in a

10   way that would respect State law decisions about who

11   should be eligible for exemptions.

12   And secondly, I was asked about -- by the

13   Court about substantive difference between automatic

14   restoration of rights versus a State automatically

15   allowing an individual to retain rights. In many

16   instances there's no passage of time. There are no

17   additional conditions that an offender must meet in

18   order to get that restoration. It is just as automatic

19   as not having them taken away in the first instance.

20   And I think my last point to the Court: If

21   the meaning of "restored" in (a)(20) is so clear, as the

22   government says it is, then I don't know why Congress

23   would need to have added language to (a)(33) to clarify

24   that they were limiting that concept to only rights that

25   were taken away and restored.

1   Thank you.

2   CHIEF JUSTICE ROBERTS: Thank you, Mr. Coad.

3   The case is submitted.

4   (Whereupon, at 11:42 a.m., the case in the

5   above-entitled matter was submitted.)

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