SUPREME COURT OF THE UNITED STATES

Syllabus

IN RE LYDXIA

ON CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 02-04. Argued February 6, 2022—Decided March 11, 2022

The Petitioner brings the case before our Court following the lower court's issuance of a contempt of court citation upon her. In that, the lower court failed to conduct a proper *ex parte* hearing for the Plaintiff—seeing the directions given to the lower court by this Court were not followed as well as procedural due process rights were violated. Following a shout of victory in the lower court's conclusion of the proceedings as well as the submission of the presiding judge's order, Petitioner was held in contempt by the presiding judge in the lower court—the judge who is now Respondent in the matter before our Court. Petitioner filed a notice of appeal and petitioned for a writ of *certiorari*—which we granted; however, JUSTICE GORSUCH took no part in that vote. Nevertheless, the incumbent President of the United States did pardon the Petitioner. While it did raise the eyebrows of each member of this Court, Respondent—as well as justices—argued the matter before us as moot, which we disagreed with; the matter is not moot.

Held: The United States District Court for the District of Columbia failed to follow the procedure in a contempt of court matter through an *ex parte* hearing. Pp. 2-4.

(a) The United States District Court for the District of Columbia conducted an unconstitutional *ex parte* hearing. Pp. 5-6.

(b) Petitioner was unlawfully and unconstitutionally held in contempt of court. Pp. 5-6.

(c) The matter before the Court is not a moot one; it is a perfectly active case. For the matter to be moot, the questions before the Court would have to be deemed moot. Pp. 6-8.

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[March 11, 2022]

CHIEF JUSTICE THOMAS delivered the opinion of the Court, which JUSTICE RUSHING joined. JUSTICE SCALIA filed a concurring opinion. JUSTICE GORSUCH took no part in the decision of this case.

I.

First and foremost, due process is a fundamental right of any and all Americans in a court of law as well as in other situations and scenarios. This conclusion is constitutionally granted under the Fifth Amendment and Fourteenth Amendment to the United States Constitution. As we held in *Hagar* v. *Reclamation Dist.*, 111 U.S. 701 (1884), a defendant is entitled to an "opportunity to be heard." In that, a defendant has the right "to be notified of charges, to have the assistance of counsel, to a summary process, and to present a defense." *Cooke* v. *United States*, 267 U.S. 517, 537 (1925). Dipping further into *Cooke*, we also said that the defendant would

have more rights in a criminal proceeding—"privilege against self-incrimination [and the] right to proof beyond a reasonable doubt." *Ibid*, citing *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 444 (1911). Otherwise, we would have criminal defendants violating their Fifth Amendment rights, knowing none the better. Given that we have said, "[c]riminal contempt is a crime in the ordinary sense," *Bloom* v. *Illinois*, 391 U.S. 194, 201 (1968), these rights would certainly apply to those held in contempt of court. With a criminal contempt matter, it is admittedly complicated and difficult to provide some kind of judicial review to the matter. It is only because an official's contempt power is "'liable to abuse.'" *Mine Workers* v. *Bagwell*, 512 U.S. 821 (1994) (quoting *Bloom* v. *Illinois*, 391 U.S. 194, 202 (1968)). Pushing through the pain, our jurisprudence on this topic has remained the same; we have "attempted to balance the competing concerns of necessity and potential arbitrariness." *Id.*, at 832; see *e.g.*, *Young* v. *United States*, *ex rel. Vuitton et Fils*, 481 U.S. 787, 820-821 (1987). In that, Justice Scalia—in real life, not the JUSTICE SCALIA on our Court—concurred that "judicial contempt power is one of "self-defense," limited to punishing those who "interfere with the orderly conduct of [court] business or disobey orders necessary to the conduct of that business"). *Ibid.* Given that the court business was over and that the Petitioner did not disobey an order necessary to any relevant court business, we fail to see the logic behind the lower court's issuance of contempt of court. To be entirely clear, the case was essentially over when the Petitioner was held in contempt. The final order of the judge was submitted to the parties

as well as to the public, and the Petitioner shouted in victory. This is normal, human behavior. When this Court reviews a contempt of court appeal, our adjudication has to also weigh the question of "does the actions that occurred in the lower court interfere, slow, or disrupt the proceedings of the lower court"? In that, if the alleged behavior threatens a court's "immediate ability to conduct proceedings," *ibid*,—then we would have to opine in favor of the lower court. However, that is, simply put, not the situation before us.

Having found that the contempt power of courts is liable to abuse, the Court has declared that normal requirements of a summary contempt charge "includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority' before the public." *In re Oliver*, 333 U.S. 257, 275 (1948), quoting *Cookie*, 267 U.S., at 536. We have also held before that "direct contempts also cannot be punished with serious criminal penalties absent the full protections of a criminal jury trial." *Mine Workers*, 512 U.S., at 833 (citing *Bloom*, 391 U.S., at 210).

Further in *Bloom*, we came to two, conclusive holds: (1) do the person's actions which satisfy contempt fall under violation of an Act of Congress, and (2) was the punishment applied serious enough to require the full protections of a jury? See *Bloom*, 391 U.S., at 210).

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under violation of an Act of Congress, and (2) was the punishment applied serious enough to require the full protections of a jury? See *Bloom*, 391 U.S., at 210).

To the first question, the "Act of Congress" requirement would imply that the Petitioner would have to violated one of the three clauses according to Title 18, Section 401 of the United States Code. In that, we see: (1) "Misbehavior of any person in [the court's] presence or so near thereto as to obstruct the administration of justice." *Ibid*. That is a clear and obvious no. This simply did not occur in the lower court's case channel. It could not have interrupted the administration of justice, seeing as it occurred post-trial, upon the submission of the presiding judge's final order and opinion. (2) "Misbehavior of any its officers in their official transaction." *Ibid*. This simply just did not happen; therefore, it would be deemed inapplicable. (3) "Disobedience or resistance to its lawful writ, process, order, rule, decree, or command." *Ibid*. Again, it was after the presiding judge submitted the opinion. Therefore, this clause would hypothetically and theoretically hold more water than the second clause—see *ibid*. However, it literally holds no water; an individual shouting in happiness or yelling "yay"! does not serve as basis for a presiding judge to hold the individual in contempt of court.

As for the second question, if the first question fails to be satisfied, then how can a criminal jury be assembled to hear the matter? It is already proven to be a fruitless matter if you cannot prove that the individual did, in fact, violate one of those three clauses. Therefore, the contempt of court issuance was unlawfully imposed. Nevertheless, in the *ex parte* hearing, the Petitioner

was unconstitutionally held in contempt of court, seeing that the lower court failed to conduct a proper review of the law as well as the judge should have "recus[ed] [as it must be required] where the probability of actual bias on the part of the judge or decision-maker [sic] is too high to be constitutionally tolerable." *Caperton* v. *A. T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009) (quoting *Withrow* v. *Larkin*, 421 U.S. 35, 47 (1975)).

II.

There was the question of mootness—raised by JUSTICE SCALIA. To address this matter, we had the parties submitted supplemental briefs to determine if the matter was moot or not. The Petitioner, in short, argued: no, the matter is not moot. The Respondent argued contrasting thoughts. The notion of mootness was erected because of President Francis H. Underwood's pardoning of the Petitioner for the criminal allegations against her. JUSTICE SCALIA, unfortunately and weirdly, is missing the obvious in the question of determining if the matter is moot or not. Simply put, it is not moot.

A.

The Supreme Court has justified the mootness doctrine on the ground that it "ensures that the Federal Judiciary confines itself to its constitutionally limited role of adjudicating actual and concrete disputes, the resolutions of which have direct consequences on the

parties involved." See *Genesis Healthcare*, 569 U.S. at 71. Under our previous opinions, "[a] case that has become moot [at] any point during the proceedings 'is no longer a 'case' or 'controversy' for purposes of Article III', and is outside the jurisdiction of the federal courts." See *United States* v. *Sanchez-Gomez*, 138 S.Ct. 1532, 1537 (2018) (quoting *Already*, 568 U.S. at 91). See also *e.g.*, *Iron Arrow Soc'y* v. *Heckler*, 464 U.S. 67, 70 (1983) (*per curiam*) ("Federal constitutional authority extends only to actual cases or controversies."); *St. Paul Fire & Marine Ins. Co.* v. *Barry*, 438 U.S. 531, 537 (1978) ("[M]ootness … implicates our jurisdiction."); *Richardson* v. *Ramirez*, 418 U.S. 24, 36 (1974) ("[P]urely practical considerations have never been thought to be controlling by themselves on the issue of mootness in this Court … [W]e are limited by the case-or-controversy requirement of Art[icle] III to the adjudication of actual disputes between adverse parties."); *North Carolina* v. *Rice*, 404 U.S. 244, 246 (1971) (*per curiam*) ("Mootness is a jurisdictional because the Court 'is not empowered to decide moot questions or abstract propositions.'") (quoting *United States* v. *Alaska S.S. Co.*, 253 U.S. 113, 116 (1920)). A case or controversy is established within the questions presented to the Court. As long as nothing interferes with the questions presented before the Court, the matter is not moot. Otherwise, we would be adjudicating "moot questions" or "abstract propositions," *ibid*. That is the nuance that JUSTICE SCALIA fails to see and understand. Following the principles of *stare decisis*, there is no reason nor basis to overrule or change the previous holdings of the Court.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 02-04

IN RE LYDXIA

ON CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[March 11, 2022]

JUSTICE SCALIA, concurring in judgment.

Article III of the United States Constitution invests "the judicial Power of the United States […] in one supreme Court." And it is this judicial Power that "shall extend to all Cases […] and to Controversies." History has held these clauses by the name of "cases and controversies." A requirement in all cases is that there is an active case or controversy that must exist at all stages of litigation. *Kingdomware Techs., Inc.* v. *United States*, 136 S. Ct. 1969, 1975 (2016). This Court has held that since the time of the founding fathers, this doctrine of mootness has existed, see *Muskrat* v. *United States*, 219 U.S. 346, 351-353 (1911) (quoting *Hayburn's Case*, 2 Dall. 409 (1792)). In this uncommon case, the President issued a pardon for the Petitioner and, as such, the question of mootness was presented. This Court ordered supplemental briefing on the issue, and this Court should have found the matter to be moot and vacated the opinion of the lower as well as dismissed the case at this level on the basis of mootness. I concur only in the judgment of vacating the decision of the District Court.

I.

The facts of this case begin on February 3rd, 2022. Allegedly on that day, the then-Secretary of State, Lydxia, defamed a Mr. Abrams in the Washington, D.C. game. On the following day, Mr. Abrams filed suit in the United States District Court for the District of Columbia. This is the case of *RobertB_Abrams* v. *Department of State*, *et al.* In demur to the complaint, the Department of State, represented by the Attorney General of the United States, moved to dismiss the action on the grounds that the National Federal Torts Act, and this Court's decision in *United States* v. *SenatorCodyJarvis*, 1 U.S. 16 (2022) foreclosed federal suits against defamation. The District Court agreed and dismissed the case. Just before the lower court issued its decision, however, the Petitioner stated "my opinion" accompanied with a happy face emoji with hearts, instead of eyes. After the District Court issued its decision, the Petitioner pinged Mr. Abrams in the case channel on Discord with the letter "L," a common trend to denote "loser." In response to this, the District Court held the Petitioner to the charge of contempt of court and made a new proceedings channel called *Ex-Parte Lydxia*. On the same day, February 4th, the District Court found the Petitioner in contempt of court and sentenced them to one (1) day in federal prison. The next day, the President issued a pardon by his authority under the Constitution to the Petitioner to expunge her contempt of court citation, no conditions were connected to it. In the *ex-parte Lydxia*, the President of the United States, on special appearance, presented to the District Court his "full and unconditional" pardon. The District Court, relying on our decision in *Burdick* v. *United States*, 236 U.S. 79 (1915), asked and waited for the Petitioner to accept his

pardon, and she did. On the day prior to the pardon—February 4th—, the Petitioner filed for a writ of *certiorari*, which was granted.

II

"In general, a case becomes moot 'when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.'" *Murphy* v. *Hunt*, 455 U.S. 478 (1982) (quoting *United States Parole Comm'n* v. *Geraghty*, 445 U.S. 388, 396 (1980); see also *Powell* v. *McCormack*, 395 U.S. 486, 496 (1969) ("Simply stated, a case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome."). In this case, we must first and foremost examine and jurisdictional questions which are present. Since mootness is indeed a question of jurisdiction for Article III courts, see *North Carolina* v. *Rice*, 404 U.S. 244, 246 (1971) (*per curiam*), we must, therefore, decide this fundamental question: does a full and unconditional pardon postconviction, which was accepted, makes moot appeals from that conviction. To begin our examination, we must review hat the pardon is and its effects.

The Constitution provides that the President of the United States "shall have the power to grant reprieves and pardons for offences against the United States, except in cases of impeachment." *Ex Parte Garland*, 71 U.S. 333 (1866). "The power thus conferred is unlimited, with the exception stated. It extends to every offence known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment." *Ibid.*

The pardon power, inherent to the President's power, extends to contempt of court charges and is subject to exceptions and to challenges over the validity of the pardon in its delivery. See *United States* v. *Wilson*, 32 U.S. 150 (1833). As to its effects, "it releases the punishment and blots out the existence of guilt, so that in the eye of the law, the offender is as innocent as if he had never committed the offence. […] If granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity." *Garland*, *supra*, at 381. The law considers the Petitioner "a new man" and in the eyes of the law "never committed the offence." To answer the question of mootness, we must ask a second question: can a person not be convicted of the United States, challenging a conviction that does not exist? Can a person, found not guilty by a jury, appeal tto the Supreme Court, on a point of law? The answer is "no" for the same reason. There is no interest, no stake left in the case. Hypothetically, if we choose to adopt and uphold the lower court's decision in this matter, nothing happens. The President's pardon has already been issued, recognized by the District Court, and the matter dismissed. If we, however, vacated the conviction, which in the eyes of the law, does not exist, and remanded this case, still nothing happens. The Petitioner is not imprisoned. The Petitioner is not barred from office, the Petitioner has a clean record, a new credit, and, in the eyes of the law, this case never happened. There is nothing for this court to do but to issue an opinion with literal zero effect, not minimal, zero. The only thing we can do is issue an opinion for the sake of case law. This is an advisory opinion, and the Constitution as well as our own precedent precludes us from taking this course. Advisory opinions are not a matter of our powers. See *City of*

Erie v. *Pap's A.M.*, 529 U.S. 277, 287 (2000). As such, to the question of if a full and unconstitutional pardon post-conviction which was accepted makes appeals moot, I must find it does.

III

The Petitioner, in their supplemental brief, finds in *contra* of this on three grounds: (1) the case law thus far only deals with mootness for plaintiffs; (2) this case does not fit the criteria for being an advisory opinion, and (3) even if it were moot, it is accepted by the capable of repetition and evasion of review doctrine. In regards to the point, we must contextualize the statement. First, it ignores the fact that not every plaintiff is a petitioner in this Court. If in a civil case, a plaintiff was to win in the pleadings and head into discovery, and the plaintiff and the defendant agreed to a settlement with no conditions for the plaintiff to dismiss the case and for the defendant to waive any appeals in this case. Would it not be moot if the defendant, after already giving the plaintiff all the relief they sought, to appeal the lower court not sustaining his demurrer? In that case, he would be the appellant, or more likely for us, the Petitioner, and the Court would find the case moot and dismiss. The reason a lot of case law finds the case the "plaintiff" brings moot is because the plaintiff brings the case for review. On the Supreme Court level, these are called appellants or petitioners. And even without these contexts, this point fails for two more reasons. First, little of our case law deals with criminal case where an acquitted defendant or pardoned defendant, and the question of mootness because it has been so universally recognized that neither could appeal a convict which either did not happen or was pardoned. See *United States* v. *Schaffer*,

240 F 3d. 35 (D.C. Cir. 2001). In that, the answer to our question was so clear that the independent counsel, in that case, found that the pardon made all pending appeals moot and the United States Court of Appeals for the District of Columbia agreed with no fanfare. Secondly, even if this universal understanding was non-existent, and if our case law was unclear on the question, the text of the Constitution does not find such. The Constitution requires a case and or controversy for this Court to even have a whiff of jurisdiction to hear the question. It does not matter that it is a defendant who appeals a decision of a lower court. There is no interest for the parties. If a plaintiff won in the lower court and appealed like if a defendant won in the lower court, the case would be moot for them. Otherwise, what would be the result? In criminal cases, all dismissals and not guilty verdicts would be appealed to this Court for advisory opinions on points of law. In civil cases, it would result in something similar. The Constitution limited the federal judicial power to be the weakest of the three branches. This is for good reason; this Court is not connected to the people. It is independent of the political will of the majority. This is of course by design. See The Federalist No. 78, 81. The Petitioner's first argument as to the case not being moot; thus, it fails as *non-sequitur* to our case law, to the context thereof, and to our Constitutional authority.

The Petitioner's second argument is that this case does not fit the criteria of being an advisory opinion but presents no arguments to forward this. However, this conclusion is not persuasive. *Black's Law Dictionary* (11th ed.) defines moot as "[h]aving no practical significance, hypothetical or academic." The same defines an advisory opinion as "[a] nonbinding statement by a court of its interpretation of the law on a matter submitted for that purpose."

The Petitioner's second argument is that this case does not fit the criteria of being an advisory opinion but presents no arguments to forward this. However, this conclusion is not persuasive. See *Black's Law Dictionary* (11th ed.) (defining "moot" as "[h]aving no practical significance; hypothetical or academic."). The same defines an advisory opinion as "[a] nonbinding statement by a court of its interpretation of the law on a matter submitted for that purpose." The Petitioner may point out that this Court's opinion would be binding to the lower courts for reference and precedent's sake. However, the Petitioner would then fail to understand what "binding" means in this context. In this context, "binding" means to bind the parties in the case. To understand this, we are able to review another word that runs ironic to this case: unpublished opinions. *Black's Law* defines an unpublished opinion as "[a]n opinion that the Court has specifically designated as not for publication – Court rules usually prohibit citing an unpublished opinion as authority." In application, "non-binding" means not affecting the parties in the case, not on lower courts. In this case, ironically enough, we have the reverse. The Petitioner wants us to issue published case law, binding on the lower courts that is non-binding to the parties in this case. This is an advisory opinion in substance. Even if it did not fit the definition of an advisory opinion in the traditional sense, it is "a rose by another name."

Finally, the Petitioner's third argument, that this matter is one capable of reptation and evasion of review, fails. The doctrine is an exception to mootness; however, to be be met, it must meet two prongs: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be

subjected to the same action again. *Murphey*, *supra*, *Illinois Elections Bd* v. *Socialist Workers Party*, 440 U.S. 173, 187 (1979); *Sosna* v. *Iowa*, 419 U.S. 393 (1975). Perhaps the most well-known case for dealing with this doctrine is *Roe* v. *Wade*, 410 U.S. 113 (1973). In that case, we held that due to the nature of pregnancy being complete before judicial proceedings could have been completed, it was too short to be fully litigated. This Court also found that it is likely for a woman once pregnant to become pregnant again and, thus, triggered the exception to the mootness doctrine. Here, however, the facts of the case do not meet any of the two prongs required. First and foremost, the Petitioner is not a plaintiff who seeks injunctive relief against an impending doom to come with little time. In fact, nothing in the facts of the case posed any limitations to the Petitioner that were time sensitive. The Petitioner was given a separate *ex-parte* channel and was convicted. While they indeed challenge the validity of this conviction, there is no urgency. Absent the President's pardon, the Petitioner would have been released from prison and this appeal would be pending still. Unfortunately for the Petitioner, the repetitive yet evading doctrine is hard to apply for criminal appeals. Although, it may not be impossible, it just not the case here. Even if, however, there was such impending doom, there is no likelihood of repetition to apply to the same pair of parties. There is no evidence that the Petitioner is likely to be held in contempt of court again for the same conduct. That is, of course, accounting for a valid conviction of the same. But the law sees no conviction for contempt of court.

IV

The majority in this case, for reasons which I do not find persuading, find that this case is not moot. What path my esteemed colleagues have gone down; I will not follow. The "cases and controversies" clause was created to limit the reach of the courts. This Court has chipped away from such limitation in a matter that, if applied with any level of consistency, would allow acquitted and settled parties the chance to seek and obtain advisory opinions merely because they had, at one point, had standing or were in an active case. The common law tradition of the King's bench issuing advisory opinions was like a serpent, killed in the egg before it was born. For the majority to find otherwise is erroneous, and, thus, I do not join my esteemed colleagues.

It must be noted, however, that I do not find that we hold jurisdiction on this matter, I do not address the questions presented. Whether or not conduct after proceedings have been completed can be contemptible or not, or whether the proceedings, in this case, were unconstitutional, I do not address. Whatever rationale the majority finds, I do not address it. That rationale may be good indeed, but for my personal convictions to the Constitution, I dare not breath *logos* on this matter.

* * *

For the aforementioned reasons, I find this case has become moot and, thus, we have lost jurisdiction on this matter. I concur to the judgment, not for the rationale, for I do not join or dissent from, but for the result: to vacate the decision of the lower court. Beyond that, I would also dismiss this appeal as moot. However, my esteemed colleagues do not join me, and I am, thus, left out in the cold. Therefore, I respectfully concur in judgment only and remain mute on the rest.