No. 19-1280

In the Supreme Court of the United States

THE IDAHO DEPARTMENT OF CORRECTION; HENRY ATENCIO, in his official capacity as Director of the IDOC; JEFF ZMUDA, in his official capacity as Deputy Director of the IDOC; AL RAMIREZ, in his official capacity as Warden of the Idaho State Correctional Institution; and SCOTT ELIASON, M.D.,
Petitioners,

v.

ADREE EDMO, aka Mason Edmo,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUGGESTION OF MOOTNESS

DYLAN A. EATON
J. KEVIN WEST
BRYCE JENSEN
PARSONS BEHLE & LATIMER
800 West Main Street
Suite 1300
Boise, Idaho 83702
Counsel for Petitioner Scott Eliason, M.D.

LAWRENCE G. WASDEN
Attorney General State of Idaho
BRIAN KANE
Assistant Chief Deputy
MEGAN A. LARRONDO
Deputy Attorney General
BRADY J. HALL
Special Deputy Attorney General
Counsel of Record
MOORE ELIA KRAFT & HALL, LLP
P.O. Box 6756
Boise, Idaho 83707
(208) 336-6900
brady@melawfirm.net
Counsel for Petitioners the Idaho Department of Correction and Henry Atencio, Jeff Zmuda, and Al Ramirez, in their official capacities

August 24, 2020

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

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INTRODUCTION

On July 10, 2020, Respondent Adree Edmo received the sex reassignment surgery the district court ordered in the injunction that Petitioners challenge in their Petition for Writ of Certiorari. Because Edmo has now received the surgical relief she sued to obtain, this Court is unable to affect the outcome of the dispute and the terms of the injunction have been fully and irrevocably carried out. Thus, Petitioner's appeal is moot. Consistent with this Court's equitable tradition, Petitioners respectfully request the Court dismiss the appeal as moot, and vacate the lower courts' orders and judgment as they relate to Petitioners.[1] Vacatur is necessary to prevent Petitioners from unfairly suffering the implications and legal consequences of a judgment, now unreviewable because of mootness.

STATEMENT

On June 1, 2018, Edmo filed a motion for preliminary injunction requesting the district court

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[1] As set forth in the Petition for Writ of Certiorari, "Petitioners" are the Idaho Department of Corrections, Henry Atencio, in his official capacity, Jeff Zmuda, in his official capacity, Al Ramirez, in his official capacity and substituted for Howard Keith Yordy, also in his official capacity, and Scott Eliason, M.D. Petitioners do not request this Court vacate the court of appeal's judgment vacating the district court's injunction as it applied to the other defendants below, including Corizon, Inc., and Yordy, Rona Siegert, Dr. Murray Young, Dr. Richard Craig, and Dr. Catherine Whinnery in their individual capacities. App. 135-37, 145. That portion of the court of appeal's judgment vacating the injunction against the other defendants was not challenged on appeal and therefore should not be disturbed.

order Petitioners, along with several other defendants, to provide Edmo with sex reassignment surgery, also referred to as gender confirmation surgery. Appendix to the Petition ("App.") at 81. On December 13, 2018, the district court granted, in part, her motion for preliminary injunction and ordered Petitioners and the other defendants to provide Edmo with "adequate medical care, including gender confirmation surgery." App. 201. The district court later clarified in a May 31, 2019 order that it had also intended to grant Edmo a permanent injunction and that Edmo had "actually succeeded on the merits of her Eighth Amendment claim" against all of the named defendants. App. 149-150.

Petitioners timely appealed to the Ninth Circuit Court of Appeals. The Petitioners motioned the appellate court to stay the injunction pending appeal after the district court declined to enter a stay. Application for Reinstatement of Stay Issued by the Ninth Circuit Pending Disposition of a Petition for Writ of Certiorari ("Stay App."), Dkt. 19A1038, Ex. B and C. The court of appeals granted the stay. Stay App., Ex. C. Ultimately, the Ninth Circuit affirmed the injunction against these Petitioners, but reversed as to all other defendants. App. 135-37, 145. In doing so, the court of appeals expounded upon the district court's order and held that Petitioner Dr. Scott Eliason acted with deliberate indifference by evaluating Edmo for surgery, but opting instead to continue Edmo on hormone therapy and supportive counseling. App. 76-78, 121-22.

Petitioners timely petitioned for rehearing en banc. Ten Ninth Circuit judges would have granted a

rehearing en banc based on the issues raised in the Petition, but the court of appeals denied the petition. App. 1-52. Petitioners then requested the Ninth Circuit stay the mandate to prevent mootness and preserve the Petitioners' ability to seek appellate review. The court of appeals denied the motion and issued the mandate. Stay App., Ex. G. The stay automatically terminated when the mandate issued. *Id*. and App. 145.

When the Petition was filed on May 6, 2020, Petitioners simultaneously filed an application with this Court to stay Edmo's surgery pending disposition of the Petition. Stay App, at 3. Petitioners urged that the "requested stay is needed to avoid mooting the appeal and to allow this Court to resolve a circuit split and address the Ninth Circuit's failure to apply this Court's binding precedent." Stay App, 1, 36-37. On May 21, 2020, this Court denied the application to stay Edmo's surgery. Petitioners complied with the district court's order and, on July 10, Edmo received the sex reassignment surgery.

ARGUMENT

I. This appeal became moot on July 10 when Edmo received the surgery that the district court ordered.

"No principle is more fundamental to the judiciary's proper role in our system of government than the [Article III] constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Raines v. Byrd*, 521 U.S. 811, 818 (1997) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976)). Indeed, federal courts are permitted to exercise their authority

"only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals." *Chi. & Grand Trunk R. Co. v. Wellman*, 143 U.S. 339, 345 (1892). "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006).

"This case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990) "Throughout the litigation, the party seeking relief must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *United States v. Juvenile Male*, 564 U.S. 932, 936 (2011) (per curiam) (internal quotation marks omitted). Therefore, if an event transpires while an appeal is pending that deprives the parties of "a personal stake in the outcome of the lawsuit," the case becomes moot and must be dismissed. *Lewis,* 494 U.S. at 477–78 (1990) (internal quotation marks omitted). For an appellate court to proceed under such circumstances to decide the case on the merits would be to issue an "advisory opinion[] on abstract propositions of law." *Hall v. Beals*, 396 U.S. 45, 48 (1969) (per curiam). And "[h]owever convenient" or tempting that might be, the Court lacks the power to declare "principles or rules of law which cannot affect the result" of the lawsuit before it. *United States v. Alaska S.S. Co.*, 253 U.S. 113, 116 (1920).

It is undisputed that an Article III case or controversy existed when the Petition was filed on May 6, 2020. Edmo had not yet received the sex reassignment surgery. Thus, a decision by the Court on the merits of this appeal would have determined the ultimate outcome of Edmo's claim for equitable relief: whether or not Edmo would receive the surgery. However, this Court's ability to affect the outcome ceased when Edmo received the surgery. Edmo has now received all of the relief the district court ordered.[2] She has no other claims for equitable relief before this Court. *See, e.g., Deakins v. Monaghan*, 484 U.S. 193, 199 (1989) (holding appeal was moot when the plaintiff no longer had any remaining claims for equitable relief). Accordingly, any future ruling of this Court on the merits of whether the district court erred in entering its injunction would amount to an impermissible advisory opinion.

Additionally, an appeal challenging an injunction becomes moot when the terms of the injunction are "fully and irrevocably carried out." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 398 (1981). In *Camenisch*, the appeal challenged a district court's preliminary injunction ordering the university to provide a hearing-impaired student with an interpreter. *Id.* at 392. However, before the Court granted certiorari, the

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[2] The court of appeals below rejected an interpretation of the injunction that required Petitioners to provide Edmo with any treatment after sex reassignment surgery was provided. App. 137 ("The [district court's] order, read in context, requires defendants to provide [gender confirmation surgery], as well as 'adequate medical care' that is 'reasonably necessary' to accomplish that end – not every conceivable form of adequate medical care.")

university obeyed the injunction and provided the student with an interpreter until the student graduated. *Id*. at 393. The Court dismissed the appeal as moot because, as here, there remained only the abstract issue of whether the district court had correctly issued the injunction.[3] Like in *Camenisch*, the district court's order was fully and irrevocably carried out when Edmo received the surgery.

II. The proper procedure is to partially vacate the court of appeal's judgment against Petitioners and remand the case to the district court with directions to dismiss Edmo's equitable claim for surgery.

"The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." *U.S. v. Munsingwear*, 340 U.S. 36, 39 (1950). *See also*, *e.g*., *New York State Rifle & Pistol Association, Inc., v. City of New York, New York*, 140 S. Ct. 1525, 1526 (2020) (Per Curium). "That procedure clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance."

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[3] It is irrelevant that *Camenisch* involved a preliminary injunction while the district court's injunctions here purportedly granted both preliminary and permanent relief simultaneously. *Camenisch* distinguished the two types of injunctions in analyzing the impact an injunction bond may have on mootness. 451 U.S. 390, 395-96. That analysis has no bearing here because no injunction bond issued below.

Id. at 40. Equitable traditions counsel that "[a] party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness to be forced to acquiesce in the judgment." *U.S. Bancorp Mortg. Co. v. Bonner Mail Partnership*, 513 U.S. 18, 23 (1994).

This Court has broad discretion to vacate lower court judgments. *See, e.g.,* 28 U.S.C. § 2106; *Munsingwear*, 340 U.S. at 40 (citations omitted). However, the principal condition this Court applies in determining whether to vacate a judgment when the appeal becomes moot is "whether the party seeking relief from the judgment below caused the mootness by voluntary action." *U.S. Bancorp Mortg. Co*., 513 U.S. at 24 (citations omitted). Here, no action by the Petitioners caused the appeal to become moot. To the contrary, Petitioners repeatedly requested the injunction be stayed to prevent the appeal from becoming moot. Stay App., at 16, 36-39 and Ex. B, C and G.

Vacating that portion of the court of appeal's judgment affirming the injunction against Petitioners is necessary to save Petitioners from the unfairness of having to acquiesce in a judgment they are now unable to challenge. Most notably, Petitioner Dr. Scott Eliason is now without recourse to overturn the appellate court's flawed conclusion that his medical judgment to continue Edmo on hormone therapy and counseling was deliberately indifferent, which is a serious and personal accusation tantamount to criminal recklessness. *Farmer v. Brennan*, 511 U.S. 825, 839-40 (1994). Similarly, the prison official Petitioners who

have the already difficult task of operating prisons should not be bound by an unprecedented decision that impermissibly interferes with the deference they must necessarily provide to the individualized treatment decisions of competent prison medical providers. *See, e.g., Turner v. Safely*, 482 U.S. 78, 84-85 (1987); *Kosilek v. Spencer*, 774 F.3d 63, 91-92 (1st Cir. 2014). Moreover, vacatur will allow for future litigation before a jury on Dr. Eliason's liability on Edmo's damages claims. After all, vacatur is "commonly utilized in precisely this situation to prevent a judgment, unreviewable because of mootness, from spawning any legal consequences." *Munsingwear*, 340 U.S. at 41.

CONCLUSION

Petitioners respectfully request that the Court enter an order dismissing the appeal as moot; partially vacating the court of appeal's judgment by vacating that portion of the injunction affirmed against Petitioners; partially vacating the district court's order by vacating that portion of the injunction as it relates to Petitioners; and remanding the case to the district court with directions to dismiss Edmo's equitable claim for surgery.

Respectfully submitted,

DYLAN A. EATON
J. KEVIN WEST
BRYCE JENSEN
PARSONS BEHLE & LATIMER
800 West Main Street
Suite 1300
Boise, Idaho 83702

Counsel for Petitioner
Scott Eliason, M.D.

LAWRENCE G. WASDEN
Attorney General State of Idaho
BRIAN KANE
Assistant Chief Deputy
MEGAN A. LARRONDO
Deputy Attorney General
BRADY J. HALL
Special Deputy Attorney General
Counsel of Record
MOORE ELIA KRAFT & HALL, LLP
P.O. Box 6756
Boise, Idaho 83707
(208) 336-6900
brady@melawfirm.net

Counsel for Petitioners
the Idaho Department of Correction
and Henry Atencio, Jeff Zmuda,
and Al Ramirez, in their official
capacities

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