No._____

In the Supreme Court of the United States

LINNZI ZAORSKI,
Petitioner
v.
NICHOLAS USNER,
Respondent

On Petition for Writ of Certiorari to the Louisiana Court of Appeal, First Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Petitioner Linnzi Zaorski was found in contempt of court *by a preponderance of the evidence* for violating her child custody judgment, and sentenced to a fixed fifteen (15) day jail term and a $250 fine. She was also ordered to pay the child's father $4,625 for attorney's fees. The jail sentence and fine were *suspended* on the conditions that she timely pay the attorney's fees and is not again found in contempt in *any proceeding*. When she was tried and convicted for contempt of court, the custody judgment which she was found to have violated was no longer in effect and had been superseded by an entirely different one. The state trial and appellate courts deemed this a *civil contempt* case. Under the terms of her contempt adjudication, she remains exposed to a fixed jail sentence and a fixed fine without ever having been convicted of anything *beyond a reasonable doubt*.

The questions presented are:

1) Did the *suspension* of Ms. Zaorski's fixed jail sentence and fine, conditioned on terms wholly unrelated to the judgment which she was convicted of violating, and which judgment no longer existed, constitute a "purge clause" for the purposes of the Due Process clause of the Fourteenth Amendment?

2) Was Ms. Zaorski, as a matter of law, unconstitutionally convicted *by a preponderance of the evidence* for *criminal contempt* of court, which requires proof *beyond a reasonable doubt*?

PARTIES

The only parties to this proceeding are Petitioner Linnzi Zaorski and Respondent Nicholas Usner.

CORPORATE DISCLOSURE STATEMENT

No corporate disclosure is required under Rule 29.6, as there are no corporations involved in this litigation.

LIST OF PROCEEDINGS

1. 22nd Judicial District Court, Parish of St. Tammany Parish, State of Louisiana, No. 2017-13865, Div. K, *Linnzi Zaorski v. Nicholas Usner*. October 15, 2021, judgment of contempt.

2. Louisiana Court of Appeal, First Circuit, No. 2022-CA-1326, *Linnzi Zaorski v. Nicholas Usner*. October 31, 2023, contempt conviction affirmed, rehearing denied [Appendix, 1-26].

3. Supreme Court of Louisiana, No. 2024 CJ 0119, *Linnzi Zaorski v. Nicholas Usner*. March 12, 2024, supervisory writ application denied [Appendix, 27].

4. Louisiana Court of Appeal, First Circuit, No. 2021 CW 1474, *Linnzi Zaorski v. Nicholas Usner*. December 2, 2021, related, but irrelevant child support writ granted.

TABLE OF CONTENTS

APPENDIX

TABLE OF CITED AUTHORITIES

Cases

Other Authorities

PETITION FOR WRIT OF CERTIORARI

Petitioner Linnzi Zaorski respectfully prays that this Court issue a writ of certiorari to review the decision of the Louisiana Court of Appeal, First Circuit.

CITATIONS TO REPORTS OF OPINIONS AND ORDERS (IN APPENDIX)

Linnzi Zaorski v. Nicholas Usner, 382 So.3d 959
Contempt conviction affirmed
(La. App. 1 Cir. 10/31/23) [Appendix, 1-25].

Linnzi Zaorski v. Nicholas Usner,
Rehearing denied (La. App. 1 Cir. 12/20/23)
https://www.la-fcca.org/opiniongrid/opinionpdf/2022%20CA%201326%20Decision%20Rehearing.pdf
[Appendix, 26]

Linnzi Zaorski v. Nicholas Usner,
Supervisory writ denied, 381 So.3d 50 (La. 03/12/24)
https://www.lasc.org/opinions/2024/24-0119.CJ.action.pdf
[Appendix, 27]

BASIS FOR JURISDICTION

On March 12, 2024, the Supreme Court of Louisiana, the state's court of last resort, denied Petitioner's application for a supervisory writ contesting the Louisiana Court of Appeal, First Circuit's October 31, 2023, decision affirming her contempt of court conviction. Jurisdiction to review this state court judgment is conferred by 28 U.S.C.A. § 1257 (a).

CONSTITUTIONAL PROVISIONS

U.S. Constitution- AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

STATEMENT OF THE CASE

A. Preservation of Federal Question.

Ms. Zaorski raised the federal question of whether her contempt of court conviction was for *criminal contempt* requiring proof *beyond a reasonable doubt* in her post-trial memorandum and new trial motion in the trial court; in her appeal in the Louisiana First Circuit Court of Appeal; and in her supervisory writ application in the Supreme Court of Louisiana. As shown in the October 31, 2023, opinion of the Louisiana Court of Appeal, First Circuit [Appendix, 1-20; 3-8], both the trial and appellate courts ruled that this was a *civil contempt* proceeding only requiring proof *by a preponderance of the evidence*. The Supreme Court of Louisiana simply denied the supervisory writ application, implicitly agreeing with the First Circuit's decision.

B. Factual Background.

Petitioner Linnzi Zaorski, the mother, and Respondent Nicholas Usner, the father, were never married, but during their short-term relationship they had a daughter C.L.U. (dob: 3/3/15), now 9 years old. On August 18, 2017, Ms. Zaorski filed to establish paternity, support, and for permission to relocate from St. Tammany Parish, Louisiana, to Lafayette Parish, Louisiana, with C.L.U. On September 12, 2017, the 22nd Judicial District Court for St. Tammany Parish signed the stipulated consent judgment presented by

both parties, which in relevant parts a) awarded them joint custody, b) designated Ms. Zaorski as the domiciliary parent, c) allowed Ms. Zaorski to permanently relocate to Lafayette Parish with their daughter, and d) granted Mr. Usner physical custody time every other weekend. A holiday schedule was also provided. Additional *alternative* provisions were set forth, depending on the *agreement* of the parties, and clauses "*encouraging*" them to be flexible and reasonable in sharing their daughter were included. Finally, Mr. Usner agreed to pay $950 / month in child support and 50% of extraordinary expenses.

Mr. Usner later filed to modify the consent judgment. Following protracted litigation, on October 19, 2020, the trial court granted a wholly new child custody judgment awarding Mr. Usner primary domiciliary physical custody, and allowing Ms. Zaorski only every other weekend custody and time with C.L.U. on Wednesday evenings. Ms. Zaorski appealed that judgment, but on December 22, 2021, the Louisiana Court of Appeal, First Circuit affirmed the new custody judgment in *Zaorski v. Usner*, No. 2021-CU-0530, 2021 WL 6070690.

C. Mr. Usner's Contempt Action.

Meanwhile, between the two custody judgments, on January 2, 2020, Mr. Usner filed an extensive contempt rule against Ms. Zaorski alleging seventeen (17) violations of the September 12, 2017, consent judgment. Ms. Zaorski filed specific answers denying

his allegations on March 9, 2020. Mr. Usner's contempt rule was eventually tried on February 9, 2021, March 24, 2021, and July 28, 2021, well after the new custody judgment was entered on October 19, 2020, completely superseding the judgment on which the contempt action was based.

D. Trial Court's Judgment.

After competing post-trial memoranda in which Ms. Zaorski argued that this was a criminal contempt of court proceeding which required proof beyond a reasonable doubt, and Mr. Usner argued that this was a civil contempt action which only required proof by a preponderance of the evidence, were submitted by the parties, on October 15, 2021, 22nd Judicial District Court Judge Patrice Oppenheim signed a judgment finding Ms. Zaorski in contempt of court by a *preponderance of the evidence* for ten (10) of the seventeen (17) allegations, and providing, *inter alia*:

> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Linnzi Zaorski is hereby sentenced to serve 15 days in the St. Tammany Parish Jail and fined $250.00 payable to the Court through the St. Tammany Paris Sheriff's Office. The fine and sentence are suspended on the following conditions:

a. Linnzi Zaorski's payment of attorney's fees in the amount of $4,625 and Court costs associated with the filing of Nicholas Usner's Rule for Contempt, filed January 2, 2020, directly to Zara Zeringue, counsel for Father, on or before February 1, 2022; and

b. Linnzi Zaorski not being found in contempt of court in any future proceeding.

Clearly, nothing in the contempt sentence and fine has any connection with or contingency related to the completely abolished 2017 judgment on which the contempt was based.

E. Ms. Zaorski's Appeal.

Following timely new trial motions in which Ms. Zaorski re-urged her criminal contempt/ reasonable doubt argument, as well as child support issues unrelated to this petition, Ms. Zaorski timely appealed the contempt judgment to the Louisiana Court of Appeal, First Circuit.

Ms. Zaorski's appeal focused on her argument that the proceeding below resulted in "criminal contempt" sanctions, which, as a matter of law, required proof *beyond a reasonable doubt*. Mr. Usner conceded, as was his position below, that the trial court properly found Ms. Zaorski to have committed the ten (10) counts of contempt only *by a preponderance of the evidence*. Ms. Zaorski denied all contempt claims, and

also urged in her appeal that many of the underlying contempt allegations lacked any predicate clear court order alleged to have been violated.

On October 31, 2023, the Court of Appeal issued its decision [Appendix, 1-25]. Therein, the panel of Judges McClendon, Holdridge, and Greene, rendered mixed results. In Judge McClendon's majority opinion, joined by Judge Holdridge, the court primarily held that this was a "civil contempt" case requiring proof only by a preponderance of evidence [Appendix, 1-10]. The trial court's contempt judgment sentencing Ms. Zaorski to a fixed, but suspended, 15-day incarceration in the St. Tammany Parish Jail and a $250.00 fine, was affirmed [Appendix, 3-5, 8]:

> On appeal, Ms. Zaorski maintains that the trial court erred as a matter of law by applying the wrong standard of proof in a criminal contempt of court proceeding and in finding her in criminal contempt of court, where no proof beyond a reasonable doubt was established as to each element of criminal contempt regarding the ten acts and omissions. Mr. Usner maintains that Ms. Zaorski was found to be in contempt of court in a civil contempt proceeding, rather than a criminal contempt proceeding, and therefore, the trial court correctly applied the preponderance of the evidence standard.

A contempt of court is any act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority. LSA-C.C.P. art. 221. A contempt of court proceeding is either criminal or civil, which is determined by what the court primarily seeks to accomplish by imposing sentence. In a criminal contempt proceeding, the court seeks to punish a person for disobeying a court order, whereas in a civil contempt proceeding, the court seeks to force a person into compliance with a court order. Billiot v. Billiot, 2001-1298 (La. 01/25/02), 805 So.2d 1170, 1173.

In **Hicks v. Feiock**, 485 U.S. 624, 631-32, 108 S.Ct. 1423, 1429, 99 L.Ed.2d 721 (1988) the U.S. Supreme Court considered whether proceedings in a family law contempt matter case were civil or criminal and found:

> [T]he critical features are the substance of the proceeding and the character of the relief that the proceeding will afford. "If it is for civil contempt the

punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court." **Gompers v. Bucks Stove & Range Co**., 221 U.S. 418, 441, 31 S.Ct. 492, 498, 55 L.Ed. 797 (1911). The character of the relief imposed is thus ascertainable by applying a few straightforward rules. If the relief provided is a sentence of imprisonment, it is remedial if "the defendant stands committed unless and until he performs the affirmative act required by the court's order," and is punitive if "the sentence is limited to imprisonment for a definite period." **Id.,** at 442, 31 S.Ct. at 498. If the relief provided is a fine, it is remedial when it is paid to the complainant, and punitive when it is paid to the court, though a fine that would be payable to the court is also remedial when the defendant can avoid paying the fine simply

> by performing the affirmative act required by the court's order.

Criminal contempt is a crime, and the Due Process Clause of the Fourteenth Amendment protects a defendant in a criminal proceeding against conviction of a crime except upon proof beyond a reasonable doubt of every fact necessary to constitute the contempt charge. On appellate review of criminal contempt, the reviewing court must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient for a rational trier of fact to conclude that every element of the contempt charge was proved beyond a reasonable doubt. Billiot, 805 So. 2d at 1174.

* * *

The trial court imposed a sentence of fifteen days imprisonment, as well as a fine. However, the trial court suspended the sentence and payment of the fine if Ms. Zaorski paid the attorney fees and court costs associated with the contempt filing to Mr. Usner's attorney on or before February 1, 2022, and if Ms. Zaorski was not found in contempt again. Thus, Ms. Zaorski had the option to pay the attorney fees and court costs and comply with the trial court's

> judgment in order to avoid jail time and a fine. Therefore, the trial court did not impose an unconditional sentence. Accordingly, we find that the proceedings were for civil contempt [emphasis added].

Nonetheless, even under the lower standard of proof, four (4) of the ten counts were reversed. In a vigorous partial dissent [Appendix, 20-25], Judge Greene would have reversed an additional five (5) counts of contempt, while implicitly agreeing that this was a civil contempt proceeding to which the preponderance standard applied. On November 14, 2023, Ms. Zaorski's timely filed a rehearing application in the appellate court, which in addition to the errors assigned regarding the application of the wrong standard of proof in a "criminal contempt" case, suggested that the sentence and financial penalties imposed on her should have been reduced in light of the reversed and vacated counts. The rehearing was wholly denied on December 20, 2023 [Appendix, 26].

F. Ms. Zaorski's Supreme Court of Louisiana Writ Application.

Pursuant to the Supreme Court of Louisiana's rules, on January 19, 2024, Ms. Zaorski timely filed her *Application for Supervisory Writ* in the Supreme Court, again arguing that she was convicted of criminal contempt court, and, therefore, the predicate standard of proof was beyond a reasonable doubt,

instead of the preponderance of the evidence standard utilized by the trial and appellate courts. In her application, on this federal Due Process question, she extensively cited from this Court's holdings in *Hicks v. Feiock,* 485 U.S. 624 (1988); *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994); and *Turner v. Rogers*, 564 U.S. 431 (2011). On March 12, 2024, the Supreme Court of Louisiana, Louisiana's court of last resort, unanimously denied her writ application [Appendix, 27].

ARGUMENT

The Court should grant certiorari in this case, as the Louisiana Court of Appeal, First Circuit has decided important questions of federal law, i.e., the definition of criminal contempt of court and its applicable "beyond a reasonable doubt" standard of proof, in a way that conflicts with relevant decisions of this Court and with other state courts of last resort.

Ms. Zaorski's conviction and sentence for what is, as a matter of law, *criminal* contempt of court must be reversed and vacated because the trial judge only found that the contempt was proved by a *preponderance of the evidence*, in violation of the Due Process clause of the Fourteenth Amendment which requires *proof beyond a reasonable doubt.*

A. The indisputable importance of the *beyond a reasonable doubt* standard of proof in criminal cases.

Consider this hypothetical:

> After a spirited pickleball match, Lou, a retired doula, pedals to the local K-Mart to replenish her team's protein bar supply. After struggling with a quirky self-checkout aisle, she pays cash and selects the "no receipt" option. She is then accused by the store security team in the parking lot of shoplifting the NATIONAL GEOGRAPHIC COMMEMORATIVE VALENTINE'S DAY ISSUE featuring Travis & Taylor on the cover. At her trial, the judge finds her guilty of theft *by a preponderance of the evidence.* She is sentenced to a fixed fifteen (15) day jail sentence and fined $250, and ordered to reimburse the store $4,265 in staff overtime for completing the necessary paperwork. However, the judge *suspends* the jail sentence and the fine on the condition that the store is promptly paid its money and Lou is never again found guilty of anything *by a preponderance of the evidence.* Unfortunately, she must continue to shop there, as it is the only store within biking

> distance and it stocks her needed prescriptions.

Any law school class hearing this scenario would promptly and correctly cry foul because "everyone knows" that all criminal convictions require proof of each element of the offense *beyond a reasonable doubt*. Yet, the example posed reflects exactly what has happened to Petitioner Linnzi Zaorski, with the full approval of the Supreme Court of Louisiana and the two lower state courts. The rulings contested in this petition have implicitly invented the novel, but untenable and unconstitutional rule that *two preponderances of the evidence might possibly resemble one beyond a reasonable doubt.* Ms. Zaorski is now forever living under the cloud of the possible wrongful loss of her freedom should this judge, or any other judge in any other future proceeding, likewise rest on the preponderance test.

Mandating proof beyond a reasonable doubt in criminal contempt of court proceedings is as important as doing so in any other criminal prosecution. The Supreme Court's definitive "beyond a reasonable doubt" decision is *In re Winship*, 397 U.S. 358 (1970). There, Justice Brennan's exhaustive and impassioned opinion explains at 361-364:

> The requirement that guilt of a criminal charge be established by proof beyond a

reasonable doubt dates at least from our early years as a Nation.

* * *

The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error.

* * *

The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt.

* * *

Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is

> critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty. Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged [emphasis added].

B. Ms. Zaorski's contempt adjudication is by definition a *criminal contempt* conviction because the September 12, 2017, stipulated child custody judgment which, on October 15, 2021, she was found to have violated had been fully superseded by the new October 19, 2020, child custody judgment. Therefore, she was not, and could not, by the contempt judgment be coerced to comply with the extinguished 2017 judgment. The only purpose of the contempt conviction, jail sentence, and fine was punishment. The suspension of the jail sentence and fine on conditions unrelated to the

impossible enforcement of the superseded judgment was not a "purge clause" which somehow transformed the judgment to a civil contempt finding. Therefore, the conviction based on a preponderance of the evidence, instead of proof beyond a reasonable doubt, was an unconstitutional violation of the Due Process clause of the Fourteenth Amendment.

As the Supreme Court of Louisiana correctly explained two decades ago in *Billiot v. Billiot*, 805 So.2d 1170, 1173-1174 (La. 2002):

> A contempt of court proceeding is either criminal or civil, which is determined by what the court primarily seeks to accomplish by imposing sentence. *Shillitani v. United States,* 384 U.S. 364, 370, 86 S.Ct. 1531, 1535, 16 L.Ed.2d 622, 627 (1966). In a criminal contempt proceeding, the court seeks to punish a person for disobeying a court order, whereas in a civil contempt proceeding, the court seeks to force a person into compliance with a court order. *State in the Interest of R.J.S.,* 493 So.2d 1199, 1202 & n. 7 (La.1986) (citing *Shillitani,* 384 U.S. 364, 86 S.Ct. 1531, 16 L.Ed.2d 622 (1966)). In the instant case, the object of the proceeding was to determine whether OCS should be punished for willfully disobeying

> the court's May 2, 1995 order, and it is therefore a criminal contempt proceeding.
>
> Criminal contempt is a crime, and the Due Process Clause of the Fourteenth Amendment protects a defendant in a criminal proceeding against conviction of a crime except upon proof beyond a reasonable doubt of every fact necessary to constitute the contempt charge. *R.J.S.,* 493 So.2d at 1202. On appellate review of criminal contempt, the reviewing court must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient for a rational trier of fact to conclude that every element of the contempt charge was proved beyond a reasonable doubt. *Id.* [emphasis added].

However, despite accurately describing the controlling legal principles in *Billiot*, *supra*, the Louisiana's high court's endorsement here of the First Circuit's equating a "suspended sentence" with a "purge clause" substantially conflicts with and misapplies this Court's decisions addressing the civil contempt vs. criminal contempt distinctions. *See generally* Roger Dale Juntunen, *Necessity and Sufficiency of Purge Provision of Contempt Order Related to Child Custody or Visitation*, 79 A.L.R. 7TH ART. 8 (2023).

First, in *Gompers v. Buck's Stove and Range Co.*, 221 U.S. 418, 441-446 (1911), the Court laid out the general distinction between civil contempts coercing compliance with a court order and criminal contempts punishing past non-compliance with the order, adding that "*in proceedings for criminal contempt the defendant…must be proved to be guilty beyond a reasonable doubt…*" at 444. Next, in *Shillitani v. U.S.*, 384 U.S. 364, 372 (1966), the Court held that the validity of coercive sanctions in a civil contempt case depend "*upon the ability of the contemnor to comply with the court's order.*"

In *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624 (1988), the Court held that a) a proceeding is for "criminal contempt" if a definite jail sentence term or a fine payable to the court is imposed, and for "civil contempt" if the party is jailed unless she performs the affirmative act required by the violated underlying court order on which the contempt is based; and b) that a "criminal contempt" must be proved beyond a reasonable doubt. Notably, in that case, as with Ms. Zaorski, the contemor's 25-day fixed jail sentence was suspended, which prompted Justice White to state, at 636-637:

> The States have long been able to plan their own procedures around the traditional distinction between civil and

> criminal remedies. The abandonment of this clear dividing line in favor of a general assessment of the manifold and complex purposes that lie behind a court's action would create novel problems where now there are rarely any—novel problems that could infect many different areas of the law. And certainly the fact that a contemnor has his sentence suspended and is placed on probation cannot be decisive in defining the civil or criminal nature of the relief, for many convicted criminals are treated in exactly this manner for the purpose (among others) of influencing their behavior. What is true of the respondent in this case is also true of any such convicted criminal: as long as he meets the conditions of his informal probation, he will never enter the jail. Nonetheless, if the sentence is a determinate one, then the punishment is criminal in nature, and it may not be imposed unless federal constitutional protections are applied in the contempt proceeding [emphasis added, internal footnote omitted].

In *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 114 (1994), which reiterated the *Hicks on Behalf of Feiock* principles, Justice Scalia's concurrence, at 512 U.S. 840-841, is especially instructive:

At common law, contempts were divided into criminal contempts, in which a litigant was punished for an affront to the court by a fixed fine or period of incarceration; and civil contempts, in which an uncooperative litigant was incarcerated (and, in later cases, fined*) until he complied with a specific order of the court. See *Gompers v. Bucks Stove & Range Co.,* 221 U.S. 418, 441–444, 31 S.Ct. 492, 498–499, 55 L.Ed. 797 (1911). Incarceration until compliance was a distinctive sanction, and sheds light upon the nature of the decrees enforced by civil contempt. That sanction makes sense only if the order requires performance of an identifiable act (or perhaps cessation of continuing performance of an identifiable act). A general prohibition for the future does not lend itself to enforcement through conditional incarceration, since no single act (or the cessation of no single act) can demonstrate compliance and justify release. One court has expressed the difference between criminal and civil contempts as follows: "Punishment in criminal contempt cannot undo or remedy the thing which has been done,

> but in civil contempt punishment remedies the disobedience." *In re Fox,* 96 F.2d 23, 25 (CA3 1938) [emphasis added].

Likewise, the concurrence filed by Justice Ginsburg and Chief Justice Rehnquist provides further analysis and context relevant to the case at bar, at 512 U.S. 845-847:

> The classifications described in *Gompers* have come under strong criticism, particularly from scholars. Many have observed, as did the Court in *Gompers* itself, that the categories, "civil" and "criminal" contempt, are unstable in theory and problematic in practice. See *ante,* at 2557, n. 3 (citing scholarly criticism); see also Dudley, *Getting Beyond the Civil/Criminal Distinction: A New Approach to the Regulation of Indirect Contempts,* 79 Va.L.Rev. 1025, 1025, n. 1 (1993) (citing additional scholarly criticism).
>
> Our cases, however, have consistently resorted to the distinction between criminal and civil contempt to determine whether certain constitutional protections, required in criminal prosecutions, apply in contempt

proceedings. See, *e.g., United States v. Dixon,* 509 U.S. 688, 696, 113 S.Ct. 2849, 2856, 125 L.Ed.2d 556 (1993) ("We have held that [certain] constitutional protections for criminal defendants ... apply in nonsummary criminal contempt prosecutions just as they do in other criminal prosecutions.") (citing cases). And the Court has repeatedly relied upon *Gompers'* delineation of the distinction between criminal and civil contempt. See, *e.g., Hicks v. Feiock,* 485 U.S. 624, 631–633, 635–636, 108 S.Ct. 1423, 1429–1430, 1431, 99 L.Ed.2d 721 (1988). The parties, accordingly, have presented their arguments within the *Gompers* framework.

Two considerations persuade me that the contempt proceedings in this case should be classified as "criminal" rather than "civil." First, were we to accept the logic of Bagwell's argument that the fines here were civil, because "conditional" and "coercive," no fine would elude that categorization. The fines in this case were "conditional," Bagwell says, because they would not have been imposed if the unions had complied with the injunction. The fines would have been "conditional" in this sense,

> however, even if the court had not supplemented the injunction with its fines schedule; indeed, any fine is "conditional" upon compliance or noncompliance before its imposition. Cf. *ante,* at 2562 (the unions' ability to avoid imposition of the fines was "indistinguishable from the ability of any ordinary citizen to avoid a criminal sanction by conforming his behavior to the law"). Furthermore, while the fines were "coercive," in the sense that one of their purposes was to encourage union compliance with the injunction, criminal contempt sanctions may also "coerce" in the same sense, for they, too, "ten[d] to prevent a repetition of the disobedience." *Gompers,* 221 U.S., at 443, 31 S.Ct., at 498. Bagwell's thesis that the fines were civil, because "conditional" and "coercive," would so broaden the compass of those terms that their line-drawing function would be lost.

Most recently, the Supreme Court observed in *Turner v. Rogers*, 564 U.S. 431, 441-442 (2011), in a child support contempt case:

> This Court has long held that the Sixth Amendment grants an indigent defendant the right to state-appointed

counsel in a *criminal* case. *Gideon v. Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). And we have held that this same rule applies to *criminal contempt* proceedings (other than summary proceedings). *United States v. Dixon,* 509 U.S. 688, 696, 113 S.Ct. 2849, 125 L.Ed.2d 556 (1993); *Cooke v. United States,* 267 U.S. 517, 537, 45 S.Ct. 390, 69 L.Ed. 767 (1925).

But the Sixth Amendment does not govern civil cases. Civil contempt differs from criminal contempt in that it seeks only to "coerc[e] the defendant to do" what a court had previously ordered him to do. *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 442, 31 S.Ct. 492, 55 L.Ed. 797 (1911). A court may not impose punishment "in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the order." *Hicks v. Feiock*, 485 U.S. 624, 638, n. 9, 108 S.Ct. 1423, 99 L.Ed.2d 721 (1988). And once a civil contemnor complies with the underlying order, he is purged of the contempt and is free. *Id.,* at 633, 108 S.Ct. 1423 (he "carr[ies] the keys of [his] prison in [his] own pockets" (internal

> quotation marks omitted)) [emphasis added].

The importance of requiring proof beyond a reasonable doubt in Ms. Zaorski's case is underscored by reviewing the extensive fact-intensive opinion in the Louisiana appellate decision contested here [Appendix, 1-25], with its dubious resolution as shown in Judge Greene's dissent, in light of the discussion in *International Union, United Mine Workers of America*, *supra*, 512 U.S. 821, 833-834 (1994):

> Contempts involving out-of-court disobedience to complex injunctions often require elaborate and reliable factfinding. Cf. *Green v. United States,* 356 U.S. 165, 217, n. 33, 78 S.Ct. 632, 660, n. 33, 2 L.Ed.2d 672 (1958) (Black, J., dissenting) ("Alleged contempts committed beyond the court's presence where the judge has no personal knowledge of the material facts are especially suited for trial by jury. A hearing must be held, witnesses must be called, and evidence taken in any event. And often ... crucial facts are in close dispute") (citation omitted). Such contempts do not obstruct the court's ability to adjudicate the proceedings before it, and the risk of erroneous deprivation from the lack of a neutral factfinder may be substantial. *Id.,* at 214–215, 78 S.Ct., at

> 659. Under these circumstances, criminal procedural protections such as the rights to counsel and proof beyond a reasonable doubt are both necessary and appropriate to protect the due process rights of parties and prevent the arbitrary exercise of judicial power [emphasis added].

Moreover, the Louisiana decision below conflicts with decisions on the same issue by other state courts of last resort. In *Lewis v. Lewis*, 373 P.3d 878 (Nev. 2016), the Nevada Supreme Court reversed a father's contempt of court 80-day fixed jail sentence, despite the trial court's staying of the sentence conditioned on his "following all future court orders." The court held the stayed sentence to still be a *criminal* contempt order lacking the "purge clause" required by *Hicks v. Feiock*, *supra*, at 485 U.S. 624, 640.

In *Jones v. State*, 718 A.2d 222 (Md. 1998), the Court of Appeals vacated a purported civil contempt fixed two-year jail sentence imposed on another father, even though the incarceration was suspended on the condition that he pay weekly child support. The court ruled this to be a punitive criminal contempt sentence with no purge clause and without regard to his compliance ability, also citing *Hicks v. Feiock*. *Id.,* at 226-232.

CONCLUSION

For all of these reasons, Petitioner Linnzi Zaorski respectfully prays that the Court grant certiorari.

Respectfully submitted,

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