

No. 23-1295

**In the Supreme Court of the United States**

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**LINNZI ZAORSKI,**

*Petitioner*

*v.*

**NICHOLAS USNER,**

*Respondent*

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

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**SUPPLEMENTAL BRIEF IN SUPPORT OF  
PETITION FOR WRIT OF CERTIORARI**

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Petitioner Linnzi Zaorski, pursuant to Rule 15 (8), files this supplemental brief in support of her petition for writ of certiorari to call to the Court's attention new and relevant cases decided after the petition was filed, or which were not yet available when the petition was prepared for filing.

In her petition, Linnzi Zaorski asserts that she was unconstitutionally convicted of *criminal* contempt of court and sentenced to a fixed, but suspended, jail term and a fine by a *preponderance of the evidence*, when the Due Process Clause of the Fourteenth Amendment requires proof *beyond a reasonable doubt*. In this supplemental brief, she further contends that the Court's grant of certiorari herein is the ideal vehicle to staunch the ongoing widespread confusion surrounding contempt of court proceedings and the routine denial of the constitutional safeguards attendant thereto, as shown in these most recent decisions. Instead, the Court can use this opportunity to clarify with precision and breadth the distinction between "civil contempt" and "criminal contempt", and the resulting constitutional mandates for each such proceeding.

For decades now legal scholars have decried the jurisprudential chaos reflected in contempt of court cases such as Ms. Zaorski's. *See, e.g.,* Robert J. Martineau, *Contempt of Court: Eliminating the Confusion Between Civil and Criminal Contempt*, 50 U. CIN. L. REV. 677, 677 (1981) [*"Few legal concepts have bedeviled courts, judges, lawyers and legal commentators more than contempt of court-in particular, the distinction between civil and criminal*

*contempt.*”]; Earl C. Dudley, *Getting Beyond the Civil/Criminal Distinction: A New Approach to the Regulation of Indirect Contempts*, 79 VA. L. REV. 1025, 1043 (August, 1993) [“*The literature on contempt of court is unanimous on one point: the law is a mess*”]<sup>1</sup>; W. Gregory Rhodes, A. *The Distinction Between Civil and Criminal Contempt in North Carolina*, 67 N.C.L. REV. 1281, 1281 (September, 1989) [“*Over the years, attempts to distinguish between civil and criminal contempts have resulted in a legal morass, perplexing lawyers, judges, and commentators.*”]; Conrad D. Brooks, *A Survey of Georgia Contempt Law*,<sup>2</sup> 13 GA. ST. U.L. REV. 1073 (July, 1997); Colleen E. McCarty, *I’m in Handcuffs; How Can It Be Civil Contempt?*, 26-JAN NEV. LAW. 22, 22 (January, 2018) [“*Attorneys, judges, and academics alike have long lamented the confusion surrounding criminal versus civil*

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<sup>1</sup>“A large body of Supreme Court law is devoted to determining what kinds of proceedings are ‘criminal’ for the purpose of invoking the enhanced protections constitutionally mandated in such cases. A similarly substantial literature has criticized this body of case law, finding it confusing and lacking in general theoretical framework” (footnote omitted). at 1043.

<sup>2</sup> “[M]uch of the confusion in interpreting the law of contempt stems from attempts to characterize contemptuous acts as either civil or criminal. Although often difficult to ascertain, the distinctions are important because the constitutional protections, procedures, and consequences vary for each type.” at 1073. See also Willaim F. Chinnock and Mark P. Painter, *The Law of Contempt in Ohio*, 34 U. TOL. L. REV. 309 (Winter, 2003); Daniel T. Eismann, *Contempt—The Basics and More*, 51-OCT ADVOCATE (IDAHO) 13 (October, 2008); Gino F. Ercolino, *United Mine Workers v. Bagwell: Further Clarification of Civil and Criminal Contempt?*, 22 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 291 (Spring, 1996).

*contempt.”*]; Wayne R. Johnson, *North Dakota’s New Contempt Law: Will It Mean Order in the Court?*, 70 N.D.L.REV. 1027 (1994).

Twenty-six years ago, one frustrated author complained, “*An intramural reassessment should take place on all levels, right up to the United States Supreme Court. With rare exception, appellate court contempt law decisions are of extraordinary poor quality.*” Lawrence N. Gray, *Criminal and Civil Contempt: Some Sense of a Hodgepodge*, 72 ST. JOHN’S L. REV. 337, 337 (Spring, 1998). Yet, again most recently, in Jani Mauer, *Clarifying Contempt in Civil Cases: Appropriate Uses in Florida*, 29 SUFFOLK J. TRIAL & APP. ADVOC. 1, 1-3 (2023-2024), the same problem is said to endure to this day:

Considerable confusion is reflected in the reported opinions, as courts frequently do not explicitly or accurately state the type of contempt involved in a given case. Courts also mischaracterize the type of contempt involved. One consequence reflected by reported opinions is a high incidence of reversals of contempt judgments on appeal; this predicament is not unique to Florida (footnotes omitted).

With that backdrop, *Armstead v. Armstead*, June 2024 WL 3075029 (Ky. App. June 21, 2024) (unpublished), a case very similar to Ms. Zaorski’s, proves the critics correct. There, another mother was found in contempt for not complying with the “parenting time orders.” The trial court imposed a seven-day jail sentence, and ordered her to pay \$250

in attorney's fees. However, just as with Ms. Zaorski, the jail sentence was "*probated on the condition that [she] abide by all of the circuit court's orders.*" *Id* at \*2. The trial judge denied her request for court-appointed counsel "*stating the proceedings were civil and [she] was not entitled to counsel.*" *Id*. In vacating the contempt conviction and sentence, the appellate court reasoned, as Ms. Zaorski contends in her petition regarding the suspension of her fine and jail sentence, at \*4:

In this case, the circuit court denied [her] requests for counsel to be appointed and to continue the hearing; called her to testify against herself; found [her] to be in contempt; and sentenced her to seven days of imprisonment. Though the imprisonment was conditionally probated on her compliance with all orders of the circuit court, the condition did not allow [her] to purge herself of the contempt. Furthermore, the conditional probation exists to potentially punish [her] for future contempt violations, which is not permitted. *See Crandell v. Cabinet for Health & Fam. Servs. ex rel. Dilke*, 642 S.W.3d 686, 690 (Ky. 2022) (citations omitted).

The sanction imposed is criminal in nature, and the circuit court abused its discretion in not considering [her] request for counsel to be appointed. Accordingly, the June 22, 2023, order is vacated in part. In the event that

another such issue arises in the future,  
[she] is entitled to counsel [footnotes  
omitted]

Yet another mother in Tennessee was given a 29-day jail contempt of court sentence and ordered to pay the father \$6,230.59 in attorney's fees, with the jail time stayed "*pending Mother's future strict compliance with the court's orders.*" *Sevigny v. Sevigny*, 2024 WL 2861844, \*1 (Tenn. App. June 6, 2024). Despite the suspension of the fixed jail sentence, as in Ms. Zaorski's situation, there was no dispute that this was a criminal contempt case, and the appellate court reversed all contempt findings and punishments because nothing was proved beyond a reasonable doubt. Notably, the appellate court awarded the mother all of her trial and appellate attorney's fees and costs, to be paid by the father.

Finally, in *Evans v. Dredze*, 2024 WL 3462095 (Md. App. July 17, 2024), the appellate court reversed what the trial court deemed a civil contempt finding proved only by clear and convincing evidence in a domestic relations protection order case, resulting in the \$5,000 fine which the mother had to pay if she did not comply with a new set of conditions wholly disconnected from the original order which she supposedly violated. Because the sanction was not imposed to force compliance with the violated order, again as with Ms. Zaorski, the appellate court construed this as a criminal contempt action solely to punish past conduct, and rejected the notion that the new conditions were a "purge clause" designed to coerce adherence to the violated order.

For these reasons and those set forth in the petition for writ of certiorari, Ms. Zaorski respectfully urges the Court to grant her petition.

Respectfully submitted,

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