No. 23-5344 ORIGINAL

In The

Supreme Court of the United States

AARON ABADI,
Petitioner,

v.

CITY OF NEW YORK,
Respondent.

On petition for writ of certiorari to review decisions by the **United States Court of Appeals for the Second Circuit,** to consider the claims as moot and instruct the **Southern District Court of New York** to dismiss the case without prejudice.

PETITION FOR WRIT OF CERTIORARI

Petitioner:
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QUESTIONS PRESENTED

1) Do the vaccine mandates instated by the City of New York exceed their authority and/or are they arbitrary and capricious? (This is not moot, as there were injuries incurred and damages sought)

2) During these last few years with the Covid-19 pandemic, government agencies and large corporations took advantage of the people and instated various mandates, rules, and regulations that were not constitutional, legal, and/or violated various laws. Many courts dragged their feet, and now at this point, the courts are mostly trying to dismiss the cases as moot. There are some recent Supreme Court cases showing that these are not moot, and the various circuit courts are each taking sides as to the mootness.

Question: If the Government and/or corporation ceases to require a pandemic mandate does a complaint for injunction become MOOT, or since the pandemic still exists, other pandemics are being predicted, and Plaintiffs were not given sufficient time to litigate, the cases are NOT MOOT?

3) In order to have standing, the 2nd Circuit required that Plaintiff must show that he was denied a job opportunity with the City of New York because of their vaccine mandate. Can Plaintiff satisfy the standing requirement, if he makes a substantial showing that his application would have been futile?

PARTIES TO THE PROCEEDING

The parties to this proceeding are Aaron Abadi ("Abadi"), with name, address, and contact info listed above, as Plaintiff/Petitioner. He is a citizen of the State of New York, and he has filed several lawsuits as an indigent pro se litigant.

Respondents is the CITY OF NEW YORK ("NYC"), which was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

CORPORATE DISCLOSURE STATEMENT

Plaintiff/Petitioner is a private person, not a corporation. Defendant/Respondent City of New York is a municipal corporation.

STATEMENT OF RELATED PROCEEDINGS

This petition was brought due to a case that was filed at the District Court for the Southern District of New York, # 1:21-cv-08071-PAE-JLC and it was dismissed (Appendix Page 8a). Initially, an emergency motion of this case was dismissed by the 2nd Circuit Court of Appeals on June 16, 2022 (Case 22-268) (Appendix Page 7a). Finally, this case was completely dismissed by the 2nd Circuit Court of Appeals (Appendix Page 1a) on May 8, 2023 (Case 22-1560), and the petition was initially postmarked well within the 90-day time limit.

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PETITION FOR WRIT OF CERTIORARI

Aaron Abadi, Plaintiff/Petitioner, comes pro se, and respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

I. OPINIONS BELOW

The opinion of the Second Circuit Court of Appeals dismissing my case without prejudice is at Abadi v. City of New York, No. 22-1560-CV, 2023 WL 3295949 (2d Cir. May 8, 2023), and reproduced here in the Appendix at Page 1a.

The Order of the district court dismissing the complaint is at Abadi v. City of New York, No. 21 CIV. 8071 (PAE), 2022 WL 347632 (S.D.N.Y. Feb. 4, 2022), and reproduced here in the Appendix at Page 8a.

(The earlier Order of the Circuit Court denying Plaintiff's emergency motion, is in the Appendix at Page 7a. The earlier Order of the district court denying Plaintiff's emergency motion is at US District Court for the Southern District of NY, Case 1:21-cv-08071-PAE-JLC (Document 24).) Not a direct part of this petition

II. JURISDICTION

The District Court has jurisdiction over this case under 28 U.S.C. § 1331: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." My claims against the Defendant arise under federal law, specifically the ninth and fourteenth amendments of the U.S. Constitution, the UNCONSTITUTIONAL CONDITIONS DOCTRINE, and other federal claims.

The District Court has the authority to grant declaratory and compensatory relief, and to vacate the NYC Vaccine Mandates under the Declaratory Judgment Act, and the Court's inherent equitable powers. 28 U.S.C. §§ 2201, 2202.

The case is not moot since Plaintiff is seeking damages.

Venue is proper in the judicial district of the Southern District of New York, because the events giving rise to this lawsuit occurred in Manhattan, New York City, the Plaintiff and the Defendant are both located in Manhattan. "A civil action may be brought in ... a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred ..." 28 U.S.C. § 1391(b)(2).

The 2nd Circuit Court of Appeals has the jurisdiction to address this appeal as 28 U.S. Code § 1295 (a) states; "The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction...(2) of an appeal from a final decision of a district court of the United States..."

This Court, the Supreme Court of the United States, has jurisdiction under 28 U.S.C. § 1254(1). This Petition was filed in a timely manner, initially postmarked well within the 90 days required. THE CASE THIS PETITION IS BROUGHT FOR IS THE 2ND CIRCUIT CASE # 22-1560 ABADI v. CITY OF NY

III. PROVISIONS, STATUTES, & REGULATIONS

14th Amendment of the U.S, Constitution:

> 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

Article III, Section 2, Clause 1:

> The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party;—to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

IV. STATEMENT OF THE CASE

1. By the spring of 2020, the novel coronavirus SARS-CoV-2, which can cause the disease COVID-19, had spread across the globe. Since then, and because of the federal government's "Operation Warp Speed," three separate coronavirus vaccines have been developed and approved more swiftly than any other vaccines in our nation's history, under the Emergency Use Authorization Statute ("EUA").

2. The EUA statute, 21 U.S.C. § 360bbb-3(e)(1)(A)(ii), explicitly states that recipients of products approved for use under it must be informed of the "option to accept or refuse administration," and of the "significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown."

3. On August 16, 2021 the Mayor of the City of New York issued an Emergency Executive Order # 225, (Appendix Page 15a) "Requiring COVID-19 Vaccination for Indoor Entertainment, recreation, Dining and Fitness Settings." The order states "that a covered entity shall not permit a patron, full- or part-time

employee, intern, volunteer, or contractor to enter a covered premises without displaying proof of vaccination and identification bearing the same identifying information as the proof of vaccination." The "covered entities," included most indoor public facilities in the city.

4. Additionally, on August 31, 2021, the Mayor of the City of New York issued an Executive Order # 78, (Appendix Page 20a) requiring "Mandatory Vaccination or Test Requirement for City Employees and Covered Employees of City Contractors." This Order requires all City employees and employees of City contractors to either show proof of vaccination, or proof of Covid negative tests each week. The purpose of both these orders and the authority supporting the Mayor's Order is as stated within the orders, "pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency."

5. These Executive Orders require even those recovered from Covid, who have natural immunity, to take the vaccine. Otherwise, they will not be allowed into all these places, and cannot work for the City, or for Contractors to the City.

6. This Petitioner, Aaron Abadi, has natural immunity as shown in the Doctor's letter (appendix page 10a). The CDC themselves say that COVID REINFECTION IS RARE (Appendix Page 11A). There was no need or benefit to

force this Petitioner to vaccinate, under the circumstances. No person with natural immunity should have to vaccinate.

7. As of December 27, 2021, an order by Dr. Dave A. Chokshi, who is the commissioner of the New York City Department of Health and Mental Hygiene ("NYC Dept. of Health"), dated Dec 13, 2021 (Appendix Page 23a) went into effect requiring all employers to exclude any employee who was not vaccinated. "Beginning December 27, 2021, workers must provide proof of vaccination against COVID-19 to a covered entity before entering the workplace, and a covered entity must exclude from the workplace any worker who has not provided such proof..."

8. Covered entity is defined as, "a non-governmental entity that employs more than one worker in New York City or maintains a workplace in New York City..." Between the three NYC Vaccine Mandates, the requirement for having a vaccine lays on pretty much on every employer in the city, and on all those tens of thousands of restaurants and public venues listed in the order.

9. <u>This Mandate from the NYC Dept. of Health, caused Plaintiff to be forbidden from even operating his own business from his own home within the City of New York.</u>

10. Also highlighting the arbitrary nature of the Mandates is the fact that compliance with the NYC Vaccine Mandates can be achieved by receiving any vaccine that has been listed for emergency use by the World Health Organization ("WHO"). The efficacy levels reported regarding the WHO approved vaccines are in

some cases, below 50%. Natural immunity, on the other hand, is reported by all sources to be significantly higher.

11. Thus, the NYC Vaccine Mandates can be satisfied by taking inferior foreign vaccines that the FDA has *not approved in any fashion*, such as the Sinovac and Sinopharm Vaccines. No credible study has found that these foreign vaccines provide better or even equivalent protection than naturally acquired immunity.

12. Plaintiff has already contracted and fully recovered from COVID-19, as evidenced in the letter from his doctor (Appendix Page 10a). As a result, he possesses naturally acquired immunity. It is *medically unnecessary* for individuals with natural immunity to undergo a vaccination procedure at this point (which fact also renders the unnecessary procedure and any attendant risks medically unethical).

13. Yet, Plaintiff, who elects not to take the vaccines, faced adverse disciplinary consequences. In short, the NYC Vaccine Mandates are unmistakably coercive and cannot reasonably be considered anything other than an unlawful order. Furthermore, it represents an unconstitutional condition being applied to Plaintiff's constitutional and statutory rights to bodily integrity and informed consent, respectively.

14. Plaintiff is unemployed and his unemployment payments ceased in September 2021, as did most of the unemployment recipients.

15. Plaintiff cannot even apply for a job without being vaccinated. Plaintiff was interested in an available job with the City of New York's Department of

Sanitation, as a contract manager, which has been this Plaintiff's line of work for about thirty years. Plaintiff attempted to apply for that job, but was not permitted to even apply for this job as he is not vaccinated (Appendix Page 28a).

16. The 2nd Circuit Court of Appeals suggested in their ruling the following: "Abadi asserts that he has standing simply because he was interested in applying for employment with the City but decided against it because of the vaccination requirement. Abadi was not prevented from applying for the job because he was unvaccinated; he simply chose not to apply. Further, had Abadi been qualified for a position, applied for the position, been offered the position, and accepted the position, he could have applied for an accommodation waiving the vaccination requirement. Abadi's alleged injury is purely hypothetical and does not confer standing."

17. This is a ridiculous assertion, since on the City of New York's website, where the job is listed, it says very clearly, "all new hires must be vaccinated against the COVID-19 virus, unless they have been granted a reasonable accommodation for religion or disability." Being that Plaintiff had no right to a religious or disability accommodation, there was no option for him to get the job. Going through the motions of applying for the job anyway, would have been an exercise in futility. There is no logical or rational reason to require Plaintiff to make futile attempts, just to create standing.

18. As a judge in that same District Court determined, "As this court determined based on Circuit Court precedent, "While a plaintiff typically lacks

standing to challenge New York State's licensing laws if he fails to apply for a firearms license in New York, there is an exception to this rule: a plaintiff who fails to apply for a firearms license in New York has standing if he makes a "substantial showing" that his application "would have been futile." United States v. Decastro, 682 F.3d 160, 164 (2d Cir. 2012)" Doe No. 1 v. Putnam Cnty., 344 F.Supp.3d 518, 530–31 (S.D.N.Y., 2018).

19. The unconstitutional conditions doctrine exists precisely to prevent government actors from clothing unconstitutional objectives and policies in the garb of supposed voluntarism when those actors fully intend and expect that the pressure they exert will lead to the targets of such disguised regulation succumbing to the government's will.

20. In Jacobson v. Massachusetts, 197 US 11 - Supreme Court 1905, it states that due to public health, forced vaccinations are allowed, and Defendant was relying on this, as submitted in her motion. However, the case is actually a bit different than our situation today. It says, "Since then vaccination, as a means of protecting a community against smallpox, finds strong support in the experience of this and other countries, no court, much less a jury, is justified in disregarding the action of the legislature simply because in its or their opinion that particular method was — perhaps or possibly — not the best either for children or adults."

21. Small pox is no comparison. It was a real vaccine that actually eradicated the disease. That is the meaning of a vaccine, or at least it was till they are now trying to broaden that meaning. The current Covid vaccines that we have

aren't eradicating anything. They were never designed to do that. Additionally, in the small pox scenario, there were no cures available, and those who caught it had it very rough. The only solution was to eradicate it. Covid has many therapeutics that work well. An overwhelming percentage survive with no long-term health issues.

22. Coercing employees and residents to receive a vaccine (whether approved under an EUA or fully by the FDA) for a virus that presents a near-zero risk of illness or death to them and which they are exceedingly unlikely to pass on to others because those employees already possess natural immunities to the virus, violates the liberty and privacy interests that the Fifth and Ninth Amendments protect.

23. "Government actions that burden the exercise of those fundamental rights or liberty interests [life, liberty, property] are subject to strict scrutiny, and will be upheld only when they are narrowly tailored to a compelling governmental interest." *Does v. Munoz*, 507 F.3d 961, 964 (2007).

24. By failing to tailor the NYC Vaccine Mandates to only those people who lack immunity of any kind, Defendant irrationally forces potential employees and residents like Plaintiff (and those similarly situated), who have naturally acquired immunity, to choose between their health, their personal autonomy, and their careers.

25. There was a very similar case brought to the New York Supreme Court, Garvey v. City of New York, with a lot of similar arguments. The Court wrote the following:

> "It is clear that the Health Commissioner has the authority to issue public health mandates. No one is refuting that authority. However, the Health Commissioner cannot create a new condition of employment for City employees. The Health Commissioner cannot prohibit an employee from reporting to work. The Health Commissioner cannot terminate employees. The Mayor cannot exempt certain employees from these orders. Executive Order No. 62 renders all of these vaccine mandates arbitrary and capricious." Garvey v. City of New York (N.Y. Sup. Ct., Oct. 24, 2022) 2022 N.Y. Slip Op. 22335.

26. There was another case in the New York Supreme Court, Med. Pros. for Informed Consent v. Bassett, 78 Misc. 3d 482, 185 N.Y.S.3d 578 (N.Y. Sup. Ct. 2023). The docket # is Index No: 008575/2022. There are some very straightforward, clear, and honest statements that lead this judge to ultimately determine that the particular vaccine mandate is arbitrary and capricious and therefore he overturned it. I will present here a few important excerpts.

27. The judge writes the following:

> "The Commissioner is specifically prohibited from implementing a mandatory immunization program for adults and children, "except as provided in section twenty-one hundred sixty-four and twenty-one hundred sixty five" of the Public Health Law (Public Health Law §206(1)(1))." And "Respondents are clearly prohibited from mandating any vaccination outside of those specifically authorized by the Legislature."

28. The judge continues and says,

> "It is well settled that in the interpretation of a statute we must assume that the Legislature did not deliberately place a phrase in the statute which was intended to serve no purpose" (In re Smathers' Will, 309 N.Y. 487,495 [1956]). Public Health Law §§206, 613, 2164, and 2165 thus create a ceiling, limiting

what Respondents may do, not a floor demarking the base from which to start. Even without this analysis, the Court of Appeals has already defined the limitations of Respondents' authority regarding vaccine mandates. "[T]he legislature intended to grant NYSDOH authority to oversee voluntary adult immunization programs, while ensuring that its grant of authority would not be construed as extending to the adoption of mandatory adult immunizations" (Garcia at 620). The Mandate, 10 NYCRR §2.61, is beyond the scope of Respondents' authority and is therefore null, void, and of no effect, and Respondents, their agents, officers, and employees are prohibited from implementing or enforcing the Mandate." Ibid

29. The Judge pointed out something else that is extremely important in that case and in our case too. He said the following:

"The fourth Boreali factor, special expertise in the field (ibid at 13-14) is implicated as this is a health-related proposal, but for reasons set forth below, it is clear such expertise was not utilized as the COVID-19 shots do not prevent transmission. Respondents fare no better under the "arbitrary and capricious" standard of Article 78. "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (Pell v. Bd. of Ed. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck,Westchester Cnty., 34 N.Y.2d 222,231 [1974]). The Mandate is entitled "Prevention of COVID-19 transmission by covered entities" (10 NYCRR §2.61). In true Orwellian fashion, the Respondents acknowledge then-current COVID-19 shots do not prevent transmission... THE COURT FINDS THE MANDATE IS ARBITRARY AND CAPRICIOUS." Ibid.

V. REASONS FOR GRANTING THE WRIT

1. Petitioner hereby petitions this Court, the highest Court in the land, for a writ of certiorari, to review the questions presented. The Supreme Court plays a very important role in our constitutional system of government. As the highest

court in the land, it is the court of last resort for those looking for justice, and it is the only court that can review a decision of the Second Circuit Court of Appeals.

CIRCUITS ARE IN CONFICT WITH EACH OTHER & WITH THIS COURT

2. As I will show below, the Circuit Courts are disagreeing with Supreme Court rulings, they're disagreeing with other Circuit Courts, and the judges within each of Circuit Courts are disagreeing with each other.

3. In the Supreme Court rules, Rule 10, it describes "the character of the reasons the Court considers." The first example is as follows:

4. (a) "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter."

5. I'm sure it has been a while since such a full-fledged conflict erupted in such an animated fashion.

6. Let's look at some of the decisions in the last two years or so:

SUPREME CT NOT Moot

7. "...even if the government withdraws or modifies a COVID restriction in the course of litigation, that does not necessarily moot the case. And so long as a case is not moot, litigants otherwise entitled to emergency injunctive relief remain entitled to such relief where the applicants "remain under a constant threat" that government officials will use their power to reinstate the challenged restrictions."
Tandon v. Newsom, 209 L. Ed. 2d 355, 141 S. Ct. 1294, 1297 (2021)

SUPREME CT NOT Moot

8. "There is no justification for that proposed course of action. It is clear that this matter is not moot. "
Roman Cath. Diocese of Brooklyn v. Cuomo, 208 L. Ed. 2d 206, 141 S. Ct. 63, 68 (2020)

1st Circuit NOT Moot

9. "Accordingly, we conclude that the plaintiffs' request for injunctive relief from EO 34's self-quarantine requirement is not moot..."
Bayley's Campground, Inc. v. Mills, No. 20-1559, 2021 WL 164973 (1st Cir. Jan. 19, 2021)

1st Circuit Moot & NOT Moot

10. "On to Bayley's then. Bayley's refused to hold moot a challenge to a COVID-19 order by the Maine governor that required most people heading to the Pine Tree State to self-quarantine for two weeks before going out in public — even though the governor had rescinded the order and replaced it with a slightly narrower one after the case came to us....
The situation in Bayley's is different from ours, however. That is because here (unlike there) the offending order is gone, along with the COVID-19 state of emergency. *12 And if more were required (which again we doubt), Governor Baker has not tried to reinstate an order like Order 43 at all despite upticks in COVID-19 cases after he jettisoned Order 43.
And that is that for Bit Bar's bid to undermine the judge's voluntary-cessation assessment..." Bos. Bit Labs, Inc. v. Baker, 11 F.4th 3, 11–12 (1st Cir. 2021)

2nd Circuit Possibly NOT Moot

11. "It is true that the "voluntary cessation" of a defendant's conduct might not moot a controversy if there is a finding that the defendant could do it again. But the event that brought about mootness here was not the Governor and Commissioner's "voluntary cessation"; as explained below, it was the voluntary decision of the municipal police chiefs to resume fingerprinting, and the plaintiffs' withdrawal of the PI motion as against the police chiefs in response."

Connecticut Citizens Def. League, Inc. v. Lamont, 6 F.4th 439, 445 (2d Cir. 2021)

3rd Circuit Moot

12. "In sum, we are persuaded that this case is moot, as the District Court correctly found. Appellants offer nothing more than speculation to suggest that we have a live controversy here. They invite us to hypothesize about future scenarios in which (a) not only does the COVID-19 pandemic reach crisis levels comparable to early-2020, but (b) New Jersey's executive officials will choose to ignore everything—both legal and factual—we have learned since those early months and bluntly reintroduce legally-suspect gathering restrictions on religious worship. This will not do, and we will therefore affirm..."
Clark v. Governor of New Jersey, 53 F.4th 769, 781 (3d Cir. 2022), cert. denied sub nom. Clark v. Murphy, No. 22-837, 2023 WL 3158378 (U.S. May 1, 2023)

3rd Circuit DISSENT NOT Moot

13. MATEY, Circuit Judge, dissenting.
"From the outbreaks of Athens, Byzantium, and London, to the ravages of smallpox, SARS, and "Swine Flu," plagues punctuate the pages of history. When such a potent enemy appears, it is natural to reach for every weapon, every tool, anything that might turn the tide. Anything that ends the emergency. But emergencies have long been "the pretext on which the safeguards of individual liberty have been *782 eroded—and once they are suspended it is not difficult for anyone who has assumed such emergency powers to see to it that the emergency will persist." 3 F.A. Hayek, Law, Legislation and Liberty 124 (1979)....

COVID-19 did not change the standards for mooting a case or controversy arising under the laws of the United States. Governor Murphy elected to use an emergency power to eliminate public religious worship. He has not carried the formidable burden of showing, with absolute clarity, there is no reasonable probability he will not do so again. Respectfully, we should decide whether the Governor's actions satisfy the First Amendment before the next emergency arrives."
Clark v. Governor of New Jersey, 53 F.4th 769, 781 (3d Cir. 2022) Dissent

4th Circuit Moot

14. "We thus hold that the plaintiffs' challenge to the Governor's long-since-terminated COVID-19 safety measures became moot on appeal, and that the voluntary cessation doctrine cannot keep it alive."
Eden, LLC v. Just., 36 F.4th 166, 172 (4th Cir. 2022)

5th Circuit NOT Moot

15. "But the government has not even bothered to give Tucker any assurance that it will permanently cease engaging in the very conduct that he challenges. To the contrary, as noted, counsel for TDCJ stated precisely the opposite during oral argument—TDCJ would not guarantee congregation in the future, but instead would reserve the question in light of potential "time, space, and security concerns."
If anything, it is far from clear that the government has ceased the challenged conduct at all, let alone with the permanence required under the "stringent" standards that govern the mootness determination when a defendant claims voluntary compliance. For each of these reasons, this case cannot possibly be moot."
Tucker v. Gaddis, 40 F.4th 289, 293 (5th Cir. 2022)
(Also see the Concurrences)

6th Circuit Moot

16. "Whether the claim as a whole is moot depends on whether there is "a fair prospect that the [challenged] conduct will recur in the foreseeable future." Ohio, 969 F.3d at 310. For all the reasons recited above—the changed circumstances since the State first imposed its mask mandate, the substantially developed caselaw, the lack of gamesmanship on the State's part—we see no reasonable possibility that the State will impose a new mask mandate with roughly the same exceptions as the one originally at issue here. This claim is moot—indeed palpably so."
Resurrection Sch. v. Hertel, 35 F.4th 524, 530 (6th Cir.), cert. denied, 214 L. Ed. 2d 181, 143 S. Ct. 372 (2022)

6th Circuit CONCURRENCE in Part

17. CHAD A. READLER, Circuit Judge, concurring in part and dissenting in part.

"I concur in parts I and II.A of Judge Kethledge's majority opinion, which hold that plaintiffs' preliminary injunction appeal is moot. But, for many of the reasons stated in Judge Bush's thoughtful dissent, I believe plaintiffs' claims for declaratory relief and a permanent injunction remain alive. To my mind, mootness of this appeal is distinguishable from mootness of the underlying claims....

All things considered, I believe the preliminary injunction proceedings are moot. But I would allow the district court to resolve plaintiffs' claims for declaratory relief and a permanent injunction, which seemingly involve a straightforward application of the rule that a regulation treating religious exercise worse than any comparable secular activity must survive strict scrutiny. See Tandon, 141 S. Ct. at 1296; Monclova, 984 F.3d at 480–82."

Resurrection Sch. v. Hertel, 35 F.4th 524, 531–32 (6th Cir.), cert. denied, 214 L. Ed. 2d 181, 143 S. Ct. 372 (2022)

6th Circuit DISSENT NOT Moot

18. JOHN K. BUSH, Circuit Judge, dissenting.

"Article III judges should not be in the business of declaring an end to the COVID-19 pandemic[.]" Memphis A. Philip Randolph Inst. v. Hargett, 2 F.4th 548, 572 (6th Cir. 2021) (Moore, J., dissenting). Rather, we should be willing to acknowledge "the thing about a once-in-a-century crisis"—that "it is hard to know how it will develop over the coming months and years, particularly when COVID-19 has defied expectations to this point[,] with new variants and seasonal surges threatening to undo hard-won progress." Id. at 573 (cleaned up). In this case, however, it appears that these principles will not carry the day. A court majority instead deems moot not merely plaintiffs' preliminary-injunction request, but their entire case. Thus extinguished is plaintiffs' opportunity to litigate their claims on the merits under a proper interpretation of the First Amendment....

I hope that I am eventually proven wrong. I would be quite pleased if COVID-19 were to permanently enter humanity's rear-view mirror. But the point is that I—just like the majority—have no basis upon which to proclaim that my hopes today will surely become realities tomorrow. Because I would hold that the present controversy is not moot, I respectfully dissent."

Resurrection Sch. v. Hertel, 35 F.4th 524, 532–54 (6th Cir.), cert. denied, 214 L. Ed. 2d 181, 143 S. Ct. 372 (2022)

6th Circuit NOT Moot

19. "For the foregoing reasons, we hold that Plaintiffs' challenge to the mask requirement for children in grades K–5 in all schools in Michigan is not moot."
Resurrection Sch. v. Hertel, 11 F.4th 437, 462 (6th Cir.), reh'g en banc granted, opinion vacated, 16 F.4th 1215 (6th Cir. 2021), and on reh'g en banc, 35 F.4th 524 (6th Cir. 2022), cert. denied, 214 L. Ed. 2d 181, 143 S. Ct. 372 (2022)

7th Circuit NOT Moot

"Voluntary cessation of the contested conduct makes litigation moot only if it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 189, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). Otherwise, the defendant could resume the challenged conduct as soon as the suit was dismissed. The list of criteria for moving back to Phase 2 (that is, replacing the current rules with older ones) shows that it is not "absolutely clear" that the terms of Executive Order 2020-32 will never be restored.
It follows that the dispute is not moot and that we must address the merits of plaintiffs' challenge to Executive Order 2020-32 even though it is no longer in effect."
Elim Romanian Pentecostal Church v. Pritzker, 962 F.3d 341, 345 (7th Cir. 2020)

8th Circuit Moot

20. "In light of the current factual and legal circumstances, the appellants' challenge to the County's long-superseded Public Health Order of April 2020 is moot. "[I]t can be said with assurance that there is no reasonable expectation that the alleged violation will recur." County of Los Angeles v. Davis, 440 U.S. 625, 631, 99 S.Ct. 1379, 59 L.Ed.2d 642 (1979) (internal quotation and ellipsis omitted)."
Hawse v. Page, 7 F.4th 685, 694 (8th Cir. 2021)

8th Circuit DISSENT NOT Moot

21. STRAS, Circuit Judge, dissenting.
"The court has a funny way of safeguarding "important constitutional value[s]." Ante at 694. After letting this case sit for over a year, it locks and deadbolts the courthouse door for a group of plaintiffs trying to challenge a stay-at-home order that specifically targeted "religious services and other spiritual practices." I would allow the case to finally move forward....
This appeal presents hard questions, but we should have answered them long ago. Now we never will, which neither furthers religious freedom nor fulfills our judicial duty. See Blue Moon Ent., LLC v. City of Bates City, 441 F.3d 561, 565 (8th Cir. 2006) ("The loss of First Amendment freedoms, even for the period required to litigate a facial challenge, may constitute an irreparable injury."). The plaintiffs long ago alleged that St. Louis County "singled out religious services for special treatment in its fight against COVID-19," Judgment at 1, In re Hawse, No. 20-1920 (Stras, J., dissenting), and I would let them finally make their case. The court does not, so I respectfully dissent."
Hawse v. Page, 7 F.4th 685, 694–700 (8th Cir. 2021)

9th Circuit Moot

22. "The challenged orders have long since been rescinded, the State is committed to keeping schools open, and the trajectory of the pandemic has been altered by the introduction of vaccines, including for children, medical evidence of the effect of vaccines, and expanded treatment options. The parents' argument that the pandemic may worsen and that the State may impose further restrictions is speculative. The test is "reasonable expectation," not ironclad assurance."
Brach v. Newsom, 38 F.4th 6, 15 (9th Cir. 2022), cert. denied, 215 L. Ed. 2d 87, 143 S. Ct. 854 (2023)

9th Circuit DISSENT – NOT Moot

23. PAEZ, Circuit Judge, dissenting, with whom BERZON, IKUTA, R. NELSON, and BRESS, Circuit Judges, join:

"The courthouse doors ought to stay open during a crisis. Mindful of the Supreme Court's clear directives to California on this issue and the fact that Governor Newsom's *16 State of Emergency remains operative, I would hold that this case is not moot and affirm the district court on the merits.
This case fits within the "capable of repetition, yet evading review" exception to mootness, which applies where "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." Fed. Election Comm'n v. Wis. Right To Life, Inc., 551 U.S. 449, 462, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007) (quoting Spencer v. Kemna, 523 U.S. 1, 17, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998))....
The Supreme Court has repeatedly found pandemic restrictions capable of repetition. In Roman Catholic Diocese of Brooklyn v. Cuomo, the Court found that a church's challenge to New York's pandemic restrictions was not moot where "[t]he Governor regularly change[d] the classification of particular areas without prior notice" and retained the authority to continue doing so. —— U.S. ——, 141 S. Ct. 63, 68, 208 L.Ed.2d 206 (2020) (per curiam). Though the Supreme Court did not identify which mootness exception applied, it cited to Wisconsin Right to Life's discussion of the "capable of repetition, yet evading review" exception. Id. (citing Wis. Right to Life, 551 U.S. at 462, 127 S.Ct. 2652). The Supreme Court applied Roman Catholic Diocese in Tandon v. Newsom, holding that a challenge to California's pandemic restrictions on religious gatherings was not moot because California officials "retain[ed] authority to reinstate" the challenged restrictions "at any time." —— U.S. ——, 141 S. Ct. 1294, 1297, 209 L.Ed.2d 355 (2021) (per curiam) (citing S. Bay United Pentecostal Church v. Newsom, —— U.S. ——, 141 S. Ct. 716, 720, 209 L.Ed.2d 22 (2021) (Statement of Gorsuch, J.) (explaining that case was not moot because California officials have a record of "moving the goalposts")).
The majority points out that other circuits have recently found similar challenges to pandemic restrictions moot.2 A *17 closer look at those cases is instructive....
Because I would hold that this case is not moot and affirm the district court on the merits, I respectfully dissent."
Brach v. Newsom, 38 F.4th 6, 15 (9th Cir. 2022), cert. denied, 215 L. Ed. 2d 87, 143 S. Ct. 854 (2023)

24. BERZON, Circuit Judge, dissenting:
"I join Judge Paez's dissent in full."

Brach v. Newsom, 38 F.4th 6, 15–25 (9th Cir. 2022), cert. denied, 215 L. Ed. 2d 87, 143 S. Ct. 854 (2023)

10th Circuit Moot

25. "Because the State no longer imposes any COVID-19 restrictions on plaintiffs, all but one of their claims against the State are moot. And the State has met its burden of showing that the voluntary-cessation exception to mootness does not apply; there is no reasonable chance that the State will impose similar restrictions on these plaintiffs again. For the same reason, the mootness exception for conduct capable of repetition but evading review also does not apply here. Accordingly, we dismiss as moot plaintiffs' claims."
Church v. Polis, No. 20-1391, 2022 WL 200661, at *11 (10th Cir. Jan. 24, 2022), cert. denied sub nom. Cmty. Baptist Church v. Polis, 213 L. Ed. 2d 999, 142 S. Ct. 2753 (2022)

11th Circuit NOT Moot

26. "Norwegian, in short, has done little—certainly far less than the business in City of Erie—to convince us that it is absolutely clear that it will not reimpose its vaccine requirements. As a result, we conclude that the appeal is not moot."
Norwegian Cruise Line Holdings Ltd v. State Surgeon Gen., Fla. Dep't of Health, 55 F.4th 1312, 1318 (11th Cir. 2022)

11th Circuit Moot

27. "Having determined this case to be moot..."
Health Freedom Def. Fund v. President of United States, 71 F.4th 888 (11th Cir. 2023)

DC Circuit NOT Moot

28. "In this case, it is not "absolutely clear" that the TSA will not reinstitute its masking directives. Quite the opposite: The government is actively seeking to overturn the Middle District of Florida's decision striking down another transportation mask directive. See generally Opening Brief for

> Appellants, Health Freedom Def. Fund v. Biden, No. 22-11287 (11th Cir. May 31, 2022). And critically, the TSA has told this court directly that "there is a more-than-speculative chance that TSA will invoke the same authorities" to readopt another masking directive in the future. TSA Suppl. Br. 7–9. In addition, this court has already affirmed the TSA's statutory authority to issue the challenged directives without notice and comment rulemaking, so the TSA could reinstate the masking directives with relative procedural ease. See Corbett v. TSA, 19 F.4th 478, 486 (D.C. Cir. 2021) (upholding TSA's authority to issue mask directives); cf. Alaska v. Department of Agric., 17 F.4th 1224, 1229 n.5 (D.C. Cir. 2021) (where voluntary cessation by the government is concerned, "structural obstacles to reimposing a challenged law * * * generally moot a case"). Because there is a more-than-speculative chance that the challenged conduct will recur, these cases are not moot."
> Wall v. Transportation Sec. Admin., No. 21-1220, 2023 WL 1830810, at *2 (D.C. Cir. Feb. 9, 2023)

29. As can be seen from the above cases, and many others not listed here, the Circuit Courts are all disagreeing amongst each other, and with the other Courts. This is one of the most significant purposes and duties for this Court. The Supreme Court of the United States is hereby called upon to settle this question once and for all.

IMPERATIVE PUBLIC IMPORTANCE

30. Many sued government offices or corporations during Covid with a claim that they were overreaching and/or they were violating laws or the constitution. Most can tell you that they got little help for the immediate situation. Emergency motions were denied, and the cases were delayed and delayed.

31. When it finally reached the courts, they were denied as MOOT.

32. People suffered and lost their rights for up to three years, but could not do anything about it.

33. America without access to a functional legal system, is much the same as North Korea.

34. Especially the pro se litigants were summarily ignored and delayed, and courts responded with short unclear statements, just trying to get the case of their calendar.

35. I have significant evidence to this, if you would like to see it.

36. Article III establishes and empowers the judicial branch of the national government. It is our right as American citizens to have access to this legal system.

37. With this pandemic, we were all taken by surprise. Dr. Fauci, Bill Gates, and other pandemic projectors, are all saying that we should expect more pandemics really soon. Some said this coming year.

38. In the beginning of this pandemic, the courts didn't know what to do, or how to handle it. That's fine. No one is perfect.

39. But, to moot everyone's cases, is a horrible way to deal with it. Delay, delay, delay, and then MOOT. Sorry. That is just wrong!

40. The spirit of the rule that says courts should not adjudicate cases where the issue is no longer active, certainly was not referring to this scenario.

41. Using it now and suppressing people's ability for justice is counterintuitive, and against the principals of our Republic.

42. As Eighth Circuit Judge Stras said in his dissenting opinion, "The court has a funny way of safeguarding "important constitutional value[s]." Ante at 694. After letting this case sit for over a year, it locks and deadbolts the courthouse door for a group of plaintiffs trying to challenge a stay-at-home order that specifically targeted "religious services and other spiritual practices." I would allow the case to finally move forward." Hawse v. Page, 7 F.4th 685, 694 (8th Cir. 2021)

43. It would certainly be right for this Court to review these issues and make a proper determination, rather than leave it alone, and hope it all goes away.

GASLIGHTING BY THE COURTS

THE CIRCUIT COURTS (& DISTRICT COURTS) SHOULD PROVIDE A PRO SE LITIGANT A CLEAR AND CONCISE EXPLANATION WHY HIS APPEAL WAS DENIED

44. The 2nd Circuit Court in the initial case, when I asked for an emergency motion to stay the vaccine mandates, they dismissed the case without explaining why (Appendix Page 7a). When the vaccine mandates were active, they refused to help me, then, later, when the mandates ended, the Court says it is moot. Is this fair?!

45. The Second Circuit denied my application to stay the mandate by saying, "Upon due consideration, it is hereby ORDERED that the motions are

DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact."

46. No explanation, no discussion. "It lacks an arguable basis either in law or in fact." That is disproven by now, a year later, when the New York Supreme Court agrees with me, and even the Second Circuit no longer believed that, as they responded to my appeal on May 8, 2023 (Doc 86), about a year later, with reasoning and explanations. They even overturned the district judge and dismissed it WITHOUT PREJUDICE.

47. The District Court treatment was similar. No real explanation to dismiss it.

48. Of course, when the Second Circuit finally did look at my case, they denied it as moot.

49. What kind of treatment is that?! When I needed the help, they just ignored me and treated me like I'm an idiot, then later when they finally look at it, they say it's moot now.

50. This is despite the fact that there were damages requested. As this Court recently held, even nominal damages are sufficient redress to validate standing. See Uzuegbunam v. Preczewski, 141 S.Ct. 792, 802 (U.S., 2021).

51. I'm not stupid. It is a challenge for a Court to side with an indigent pro se who has almost zero value in their minds, against the City of New York, which is an extremely powerful and prominent entity.

52. Dismissing a case as frivolous without explanation is the worst form of gaslighting.

53. Even the Second Circuit themselves believe that this would be completely inappropriate. They use the term, "simple fairness."

54. "We do not generally require that district courts set forth in exhaustive detail their rationale for dismissing actions brought by pro se litigants. But "notions of simple fairness suggest that a pro se litigant should receive an explanation before his or her suit is thrown out of court." Lucas v. Miles, 84 F.3d 532, 535 (2d Cir. 1996)." Watkins v. City of New York, 768 Fed.Appx. 101, 102 (C.A.2 (N.Y.), 2019). See Spencer v. Doe, 139 F.3d 107, 113 (C.A.2 (Conn.),1998), also see Lucas v. Miles, 84 F.3d 532, 535 (C.A.2 (N.Y.),1996), Schvimmer v. Office of Court Administration, 857 Fed.Appx. 668, 672 (C.A.2 (N.Y.), 2021), and LeSane v. Hall's Sec. Analyst, Inc., 239 F.3d 206, 209 (C.A.2 (N.Y.), 2001) (where they all use the same language verbatim).

55. The Second Circuit where gaslighting and clearly discriminating against me. Any honest and objective person can see that this is because I am an indigent pro se litigant.

56. This Court is the top of the food chain with respect to the Judicial Branch of our government. You are the only ones that can fix this. If you take this case and say something, it will get fixed instantly. If you do not, it will only get worse.

SCOTUS IS THE ONLY ONE WHO CAN FIX THIS

AND MUST REQUIRE INDIGENT PRO SE LITIGANTS TO BE TREATED PROPERLY

57. I get it. I'm a nobody in their eyes. The appeal was not even given a chance to even try. First frivolous, and then sorry, it is moot now. In other words, you're worthless anyway. I WAS DENIED MY RIGHT TO JUSTICE.

58. You know exactly what I'm talking about. In order to get to your positions, you were exposed to the court system. You know how everyone looks at indigent pro se litigants. It is your opportunity now to right the wrongs.

59. In the Rules of this Supreme Court, Rule 10a, it states the following: "The following, ... indicate the character of the reasons the Court considers:

> A United States court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."

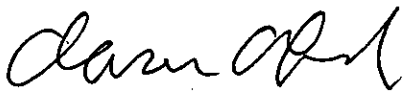
60. If this Court refuses to act, it will only get worse. Gradually we, the indigent pro se litigants, become the SERFS and you and the others will become the LORDS. It is only a matter of time.

VI. CONCLUSION

WHEREFORE, Petitioner requests that this court grant this writ of certiorari, and finally allow this Plaintiff/Petitioner to have his day in court to

present his cases, and for this Court to respond and resolve the questions and issues herein.

Respectfully submitted on July 25, 2023,



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