

No. 25-\_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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THOMAS STEVEN SANDERS,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,

*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

In a 2014 federal capital trial, Mr. Sanders was convicted of the 2010 kidnapping and killing twelve-year-old L.R. In accord with the jury's verdict, the district court sentenced him to death on one count of kidnapping resulting in death and one count of use of a firearm in connection with a crime of violence (kidnapping) resulting in death. Mr. Sanders timely appealed, challenging his convictions and death sentences, and his appeal was argued before the United States Court of Appeals for the Fifth Circuit in 2020. While the appeal was pending, on December 23, 2024, President Biden commuted Mr. Sanders's death sentences to life in prison. Months later, on March 27, 2025, the Fifth Circuit decided Mr. Sanders's appeal, vacating the use of a firearm conviction and otherwise affirming the judgment of the district court.

Mr. Sanders's appeal raised thirteen issues for review. Some of these concerned both his convictions and death sentences, but some concerned only the death sentences, which were no longer in effect by the time the Court of Appeals issued its opinion. Nonetheless, finding that “[the commutation] did not necessarily moot the issues Sanders has raised in his appeal,” the Fifth Circuit proceeded to decide the death-penalty-related issues. It did not explain why the issues were “not necessarily” moot, given that the President had commuted the death sentences Mr. Sanders had challenged.

Mr. Sanders moved for panel rehearing, arguing that the rulings on the death-penalty-related issues should be withdrawn as advisory opinions, since he was no longer facing the federal death penalty, which

made moot the sentencing questions raised in the appeal. The panel denied that request.

This case presents the following question:

1. Following commutation of a death sentence to life in prison without the possibility of release, does a case or controversy regarding the death penalty persist, so that courts retain the power to decide capital appellate issues. Or are those issues moot, since the death sentence is no longer in effect.

## **PARTIES TO THE PROCEEDING**

All parties to the proceeding are listed in the caption of this document. The petitioner is not a corporation.

## **RELATED PROCEEDINGS**

- *United States v. Thomas Steven Sanders*, U.S. District Court No. 1:10-cr-351-1, W.D. La., filed Oct. 29, 2010, judgment entered September 30, 2014.
- *United States v. Thomas Steven Sanders*, U.S. Court of Appeals No. 15-31114, U.S. Court of Appeals for the Fifth Cir., docketed Jan. 14, 2016, judgment entered March 27, 2025, petition for panel rehearing denied July 29, 2025.

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Thomas Steven Sanders respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

**OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Fifth Circuit denying Mr. Sanders's appeal is reported at 133 F.4th 341 (5th Cir. 2025), and included in the appendix at 1a. The denial of Mr. Sanders's petition for panel rehearing is unreported, and is included in the appendix at 77a.

**JURISDICTION**

The United States Court Appeals for the Fifth Circuit issued its final order granting in part and denying in part Mr. Sanders's claims for relief on

March 27, 2025, and denied his petition for panel rehearing on July 29, 2025. This petition is timely, following an extension of time of 60 days, granted by Justice Alito. *See* No. 25A445. This Court has jurisdiction under 28 U.S.C. § 1254(a).

## **CONSTITUTIONAL PROVISION INVOLVED**

U.S. Const. Art. III, sec. 2, as relevant here:

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.

## **STATEMENT**

Thomas Steven Sanders was convicted and sentenced to death on September 30, 2014, by the United States District Court for the Western District of Louisiana on two counts relating to the kidnapping and death of L.R., a minor, whose body was discovered in the woods of Catahoula Parish, Louisiana on October 8, 2010. Mr. Sanders confessed to killing L.R. and her mother, whose body was found, with his assistance, in Yavapai County, Arizona, on November 15, 2010.

Mr. Sanders appealed his convictions and death sentences to the United States Court of Appeals for the Fifth Circuit. His appeal was argued before that court on March 2, 2020.

While his appeal was pending, on December 23, 2024, President Joseph R. Biden, Jr. commuted Mr. Sanders's death sentences to life in prison without the possibility of release.

Months later, on March 27, 2025, the Fifth Circuit decided Mr. Sanders's appeal, vacating one of his sentences,<sup>1</sup> but otherwise affirming the judgment of the district court, so he is still serving life in prison without the possibility of release.

Among the claims that the Fifth Circuit addressed and issued rulings affirming were five concerning Mr. Sanders's now-commuted death sentences: sufficiency of the statutory aggravating factors, addressed at Part VIII of the court's opinion; constitutionality of victim impact testimony, addressed at Part IX of the court's opinion; propriety of the prosecutor's penalty phase closing argument, addressed at Part X of the court's opinion; arbitrariness of the Federal Death Penalty Act, addressed at Part XI of the court's opinion; and disproportionality of the Federal Death Penalty Act, addressed at Part XII of the court's opinion.

Since President Biden had commuted Mr. Sanders's death sentences and he was no longer facing the death penalty, counsel moved for panel rehearing,

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<sup>1</sup> The court found that Mr. Sanders's convictions for 18 U.S.C. § 924(j) and 18 U.S.C. § 1201(a) violated the Double Jeopardy Clause and vacated the sentence based on his conviction under § 924(j). *See* 133 F.4th at 371.

arguing that there was no case or controversy as regards capital sentencing, making any death-penalty-related issue in the appeal moot.

The Fifth Circuit denied the request for panel rehearing. This timely petition followed.

Mr. Sanders continues to serve his life sentence without the possibility of release.

## **REASONS FOR GRANTING THE WRIT**

The Court should grant the petition, vacate the judgment, and remand for entry of an opinion with the death-penalty-related decisions removed, consistent with the case-or-controversy requirement and to bring the Fifth Circuit's approach into alignment with the practice in other circuits.

The law is well established. Under Article III, Section 2 of the Constitution, the judicial power extends only to cases and controversies. “This case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate.” *Lewis v. Continental Bank Corp.* 494 U.S. 472, 477 (1990). It “denies federal courts the power ‘to decide questions that cannot affect the rights of litigants in the case before them....’” *Id.* at 477 (quoting *North Carolina v. Rice*, 404 U.S. 244, 246 (1971)). It is not enough that a case or controversy existed at the outset; it must be live at the time the case is adjudicated. *Id.* at 477-78. “This means that, throughout the litigation, the plaintiff ‘must have suffered, or be threatened with, an actual injury traceable to the [opponent in the litigation] and likely to be redressed by a favorable judicial decision.’” *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (quoting *Continental Bank Corp.*, 494 U.S. at 477)).

The Court has identified the very distinction Mr. Sanders urges here, between a sentence that is no longer in force, which does not constitute a case or controversy, and a conviction that remains in effect, which may. In *Spencer v. Kemna*, for example, the Court considered a challenge to allegedly unconstitutional parole revocation procedures. The Court found that because Spencer's sentence had expired, his challenge was moot. The Court observed, “[w]e are not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong.” 523 U.S. at 18. This also applies, of course, to Mr. Sanders's death sentences, which have been commuted and “have no demonstrable continuing effect.” *Id.*<sup>2</sup>

Those Courts of Appeal to consider the question in the clemency context concur that executive action providing a defendant or petitioner his requested sentence renders any related case or controversy moot. As Judge Wilkinson wrote, concurring in the judgment of the Fourth Circuit, “[Appellant] has received the relief ... he was seeking in this case .... The President’s commutation simply closes the judicial door.” *United States v. Surratt*, 855 F.3d 218, 219 (4th Cir. 2017). *See also Blount v. Clarke*, 890 F.3d 456, 462-63 (4th Cir. 2018) (“Governor McDonnell’s valid partial pardon reducing Blount’s sentence to 40 years’ imprisonment rendered Blount’s habeas application moot and [] the court was therefore *without jurisdiction* to address it and opine on the constitutionality of Blount’s original sentence ... as it did.”) (emphasis in original). In a D.C. Circuit case,

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<sup>2</sup> The Court specifically distinguished criminal convictions, which it conceded carry collateral consequences that sentencing does not. *Id.* at 8, 12.

addressing both the conviction and sentence, the government took the position that a presidential pardon made moot the appeals and “end[ed] all litigation.” The court agreed. *See United States v. Schaeffer*, 240 F.3d 35, 38 (D.C. Cir. 2001).<sup>3</sup>

Although the Fifth Circuit has not addressed this precise question in a published opinion, its decision in *Rocky v. King*, 900 F.2d 864 (5th Cir. 1990) is analogous and should have controlled here. *Rocky* involved class certification in a prisoner civil rights case about the conditions for field workers at Angola prison. Before class certification could be decided, however, plaintiff Rocky was reassigned from field work and no longer personally faced the challenged conditions. *Id.* at 866. The Court held that his individual case was therefore moot, *see id.* at 871, just as Mr. Sanders’s challenges to his death sentence became moot when he no longer faced the death penalty.<sup>4</sup> *See also Perez v. City of San Antonio*, \_ F.4th \_\_, 2025 WL 3559986, at \*4 (Dec. 12, 2025).

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<sup>3</sup> The Eighth Circuit appears to have taken the same approach. *See In re Carlyle*, 644 F.3d 694, 697 (8th Cir. 2011) (in another context, noting the prior dismissal of an appeal was moot following the Missouri governor’s commutation of a death sentence to life in prison).

<sup>4</sup> Unpublished Fifth Circuit opinions on closer facts reach the same result. *See, e.g., United States v. Fragoso*, 839 Fed. Appx. 900 (Mem.) (5th Cir. 2021) (dismissing appeal of denial of compassionate release motion as moot due to presidential clemency grant), *United States v. Hawley*, 697 Fed. Appx. 269 (Mem.) (5th Cir. 2017) (“Because the district court vacated the sentence from which Hawley seeks relief under § 2255, this appeal does not present a live controversy and is moot.”) (citing *Rocky v. King*, 900 F.2d 864, 867

It is irrelevant that state death penalty proceedings against Mr. Sanders have commenced.<sup>5</sup> The question of his federal death sentences is decided and cannot be reopened. “[M]oot questions require no answer,” *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) (cleaned up), and an anticipatory answer to questions that might (or might not) arise in future litigation is a classic example of the forbidden advisory opinion, *see id. See also Silverthorne Seismic, L.L.C. v. Sterling Seismic Servs.*, Ltd., 125 F.4th 593, 601 (5th Cir. 2025) (“But itching, though we may be, to reach the merits of an interesting issue, we do not sit to decide moot questions or to issue advisory opinions.”) (cleaned up).

Nor may the lower court’s ruling be justified based on the opinion’s potential usefulness in unrelated future cases. Courts are “confine[d] to resolving real and substantial controversies admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.” *Continental Bank Corp.*, 494 U.S. at 477 (cleaned up)). *See also id.* at 479 (“[T]he Article III question is not whether the requested relief would be nugatory as to

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(5th Cir. 1990)); *United States v. Rainwater*, 317 Fed. Appx. 431, 433 (5th Cir. 2009) (finding moot appellant’s challenge to an amended judgment “no longer in force”).

<sup>5</sup> On March 21, 2025, Mr. Sanders was charged in Yavapai County, Arizona, Case No. S1300CR202500325, with one count of first-degree murder and related counts. And on April 14, 2025, Mr. Sanders was charged in Catahoula Parish, Louisiana, Case No. 25-1090, with one count of first-degree murder.

the world at large, but whether the [moving party] has a stake in that relief.”).

The appropriate course, in accord with precedent and the requirements of Article III, was for the panel to revise the opinion to declare the death-penalty-related issues moot, remove the legal analysis regarding them, and reissue the opinion. This Court should grant the petition, vacate the judgment, and remand with instructions to do so.

## CONCLUSION

The petition for a writ of certiorari should be granted, the judgment vacated, and the case remanded with instructions to reissue the appellate opinion with the legal analysis of death-penalty-related issues removed.

Respectfully submitted,  
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