No. _____

In The
Supreme Court of the United States

CAROL COGHLAN CARTER,
next friend of A.D., C.C., L.G., C.R., *et al.*,

Petitioners,

v.

TARA KATUK MAC LEAN SWEENEY, in her official capacity as Assistant Secretary—Indian Affairs, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether claims for declaratory and damages relief to redress past injuries under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d–2000d-7, are moot when no prospective relief is available or sought.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioners, who were Plaintiffs in the trial court and Appellants in the Ninth Circuit, are:

- Carol Coghlan Carter, next friend of minor children A.D., C.C., L.G., and C.R.;
- Dr. Ronald Federici, next friend of minor children A.D., C.C., L.G., and C.R.;
- S.H. and J.H., a married couple, who are adoptive parents of baby girl A.D.;
- M.C. and K.C., a married couple, who are adoptive parents of baby boy C.C.; and
- K.R. and P.R., a married couple, who are adoptive parents of baby girl L.G. and baby boy C.R.

These named Plaintiffs sued for themselves and on behalf of a putative class of similarly-situated individuals defined at ¶ 50 of the operative complaint. App.79a. The Plaintiff class has not been certified.

Respondents, who were Defendants in the trial court, and Appellees in the Ninth Circuit, are:

- Tara Katuk Mac Lean Sweeney, sued in her official capacity as Assistant Secretary—Indian Affairs, the Bureau of Indian Affairs. Before Ms. Sweeney, the relevant named Defendant and Defendant-Appellee were Bruce Washburn and John Tahsuda III, who previously served as Assistant Secretary—Indian Affairs.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT—Continued

- The United States Secretary of the Interior sued in official capacity. This office is vacant as of this filing. David Bernhardt currently serves as the Acting United States Secretary of the Interior. The relevant named Defendant and Defendant-Appellee were Ryan K. Zinke and Sally Jewell, who previously served as the United States Secretary of the Interior.
- Gregory A. McKay, sued in his official capacity as Director of the Arizona Department of Child Safety.

Respondents, who intervened as defendants in the trial court, and were Appellees in the Ninth Circuit, are:

- Gila River Indian Community ("GRIC"), a federally-recognized Indian Tribe; and
- Navajo Nation, a federally-recognized Indian Tribe.

Names of petitioning children and parents are sealed pursuant to a protective order. Their names are on file with the Clerk of the Court, filed along with this petition, in an appropriately sealed list.

None of the parties are corporations.

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INTRODUCTION

The Plaintiffs in this case challenged *de facto* race-, color-, or national-origin-based discrimination as violating civil-rights laws. They sought both relief against future injury and damages and declaratory relief for suffering discrimination in the past. The Ninth Circuit held, in conflict with other circuits, in disregard of the plain mandate of the operative statute, and in contradiction to this Court's precedents, that because the *future* discrimination claims had been rendered moot by a change in circumstances, the Plaintiffs' claim for relief for *past* discrimination was also moot.

This case therefore presents the important question of availability of remedies for past injuries in cases that do not seek remedies for future injuries. The question is whether, if retrospective remedies are available—as here, damages and declaratory relief—does that provide the requisite personal stake that continues throughout the existence of the litigation such that the case is not rendered moot due to a controversy-ending event that renders prospective-relief claims moot.

The question has long percolated in the lower courts, and this case is an ideal vehicle to resolve it. The opinion below has wide-ranging ramifications for the mootness doctrine, application of Title VI of the Civil Rights Act, and a centuries-long pedigree of what we understand about prospective and retrospective remedies.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is not reported. App.1a–4a. The opinion of the United States District Court for the District of Arizona is not reported. App.5a–34a.

JURISDICTION

The Ninth Circuit issued its opinion on August 6, 2018. App.1a. It denied a timely-filed petition for rehearing *en banc* on October 15, 2018. App.36a. Petitioners request a writ of certiorari pursuant to 28 U.S.C. § 1254(1). This petition is filed within 90 days from the Ninth Circuit's denial of the petition for rehearing *en banc* per Rule 13.3.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant provisions are reproduced at App.39a–61a.

STATEMENT OF THE CASE

A. Statutory scheme: Title VI of the Civil Rights Act of 1964

Title VI was enacted so that no person "be subjected to discrimination under any program or activity

receiving Federal financial assistance" "on the ground of race, color, or national origin." 42 U.S.C. § 2000d. The elimination of such discrimination was so important to Congress that it expressly abrogated Eleventh Amendment immunity, and, for alleged violations of Title VI and some other civil-rights statutes, made available "remedies (including remedies both at law and in equity) . . . to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State." 42 U.S.C. § 2000d-7(a).

In the absence of Section 2000d-7, federal courts would be unable to award "retroactive" damages to redress past discrimination on the basis of race, color, or national origin, when those damages are to be paid by the state treasury because such claims for relief would be "barred by the Eleventh Amendment." *Edelman v. Jordan*, 415 U.S. 651, 669 (1974).

The law therefore draws a distinction between prospective and retrospective relief. Because the Eleventh Amendment allows for only prospective relief under 42 U.S.C. § 1983 against state officials, *Ex Parte Young*, 209 U.S. 123 (1908), most civil rights cases involve prospective-relief claims in Section 1983 suits. Retrospective claims stem mainly from Title VI, which expressly abrogates Eleventh Amendment immunity. Thus in a case like this, which originally included both, the mootness of *prospective*-relief claims should leave the retrospective-relief claims unaffected—and those claims should remain alive as far as the redressability element of Article III standing is concerned.

In *Texas v. Lesage*, 528 U.S. 18 (1999), this Court expressly left undecided the issue of whether Title VI retrospective-relief claims keep a case alive when prospective injunctive relief claims are not available or not sought. In *Lesage*, an applicant for a Ph.D. program alleged that the University of Texas impermissibly "considered the race of its applicants at some stage during the review process," *id.* at 19, and sought both retrospective relief (because of the University's previous treatment of him) and prospective relief (to bar the University from acting similarly in the future). The Court of Appeals ruled on the merits that his retrospective-relief claim must be dismissed—but it then dismissed the entire case, without addressing his prospective-relief claims. This Court reversed. Because the "Court of Appeals did not distinguish between Lesage's retrospective claim for damages and his forward-looking claim for injunctive relief based on continuing discrimination," it remanded so that the lower court could determine "[w]hether [claims under 42 U.S.C. §§ 1981 and 2000d] remain, and whether [the plaintiff] has abandoned his claim for injunctive relief." *Id.* at 21–22.

This case presents that question—the question *Lesage* left unresolved. Here, Plaintiffs concede they do not seek prospective injunctive relief for themselves. Unlike *Lesage*, the children and parents here do not seek a "forward-looking claim for injunctive relief based on continuing discrimination," *id.* at 21–22, because the decision below was correct that *that* claim is moot after their adoptions were finalized. The question

here is whether the *other* claims—the retrospective Title VI damages and declaratory-judgment claims—remain alive. *Id.* at 22.

Pre-*Lesage* cases indicate that the answer should be yes. *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), for example, assumed the answer to the *Lesage* question rather than deciding it. There, the plaintiff sued, among other things, under Title VI for an injunction to remedy his *past* rejections, not to prospectively enjoin an ongoing violation. *Id.* at 277–78. *Lesage* did not mention, much less overrule, *Bakke*'s holding that the Title VI retrospective-relief claim *was* available to the plaintiff where he was not seeking any prospective relief.

Retrospective claims and prospective-relief claims differ, as far as the standing inquiry is concerned, as a matter of both law and common sense. Where the plaintiff sues over both past and present discrimination, the defendant's cessation of that activity *today* renders the forward-looking relief moot—but it cannot alter the past injury or bar backward-looking relief claims stemming from that injury. Similarly, even where the Eleventh Amendment forecloses backward-looking damages claims, as in *Edelman* and *Ex Parte Young*, forward-looking relief claims can survive. This case presents the opposite side of the *Lesage* coin: do retrospective damages and declaratory-judgment claims under Title VI and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, remain viable when prospective-relief claims are foreclosed or not sought?

B. The Plaintiffs

Four children, then in the care of Arizona's foster-care system, and their then-foster parents (now adoptive parents) challenged the *de jure* discrimination they were experiencing in their child-custody proceedings under the Indian Child Welfare Act ("ICWA"), 25 U.S.C. §§ 1901–1963. They argued that ICWA creates a two-track system for child-welfare cases under which their cases were treated differently from cases involving non-Indian children in the care of Arizona's foster-care agency, the Department of Child Safety.

The Plaintiffs challenged five provisions of ICWA, 25 U.S.C. §§ 1911(b), 1912(d), 1912(f), 1915(a), 1915(b), and three corresponding Arizona state-law provisions, Ariz. Rev. Stat. ("A.R.S.") §§ 8-453(A)(20), 8-105.01(B), 8-514(C), as discriminating based on race, color, or national origin, and for violations of the First, Fifth, Tenth, and Fourteenth Amendments. App.100a–109a, App.111a–113a. The Plaintiffs specifically asked for "nominal damages, and declaratory and injunctive relief under Title VI," and separate declaratory and injunctive relief under 42 U.S.C. § 1983. App.65a ¶ 7.

The operative complaint alleges particularized injuries by alleging that the children and parents were affected "in a personal and individual way." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 n.1 (1992). It alleges concrete injuries, that is, injuries that, although "intangible," do "actually exist" and are "not conjectural or hypothetical." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016).

Specifically, they alleged the following injuries: being forced to expend extra time, effort, and cost as part of their child-custody proceedings which they would not have had to expend but for the classification imposed by ICWA; being forced to visit with strangers; undergoing the stigma of the discriminatory child-custody proceedings; experiencing emotional and psychological harm; experiencing the state's disregard of the dignity, stability and permanency of these families; having a badge of inferiority and race-, color-, or national-origin-based steering and conformity imposed on them. App.63a–64a, 65a–69a, 70a–79a, 81a–91a, 93a–109a, 111a–113a.

The Plaintiffs *particularly*, *concretely*, and *actually* suffered these and other injuries during their child-custody proceedings, and all on account of the Defendants' application of ICWA to their cases. The complaint's allegations therefore established a "causal connection between the injury and the conduct complained of." *Bennett v. Spear*, 520 U.S. 154, 167 (1997).

Moreover, those past injuries are redressable, *Spokeo*, 136 S. Ct. at 1547, by the award of the requested damages and declaratory relief.

When the operative complaint was filed, C.C. had already been adopted by M.C. and K.C. Thus, their claims for relief were based solely on *past* injuries and *past* discrimination they experienced at the hands of Defendants who were operating under the eight challenged statutory provisions. App.73a. The siblings L.G. and C.R. were adopted by K.R. and P.R. while this case

was pending in the district court. Their claims for relief were initially based on both ongoing injuries as well as past injuries and discrimination. App.73a–79a. S.H. and J.H. were able to adopt A.D. *after* the case was decided by the district court and while the appeal was pending in the Ninth Circuit. Their claims for relief were based both on present and past discrimination inflicted by Defendants acting under the challenged statutes. App.70a–71a, 77a–79a.

And of course, between the time the operative complaint was filed and the time when adoptions of all three Plaintiff families were finalized, the discrimination and injuries flowing from the Defendants' and Defendants-Intervenors' enforcement of the challenged provisions continued.

C. District Court decision

The Plaintiffs filed suit in July 2015, App.10a, and a motion for class certification in August 2015. Dist. Ct. Dkt. 22. The federal and state Defendants moved to dismiss, and two Indian tribes sought to intervene as Defendants. The class-certification motion was denied "without prejudice as premature," Dist. Ct. Dkt. 39, and the court proceeded to address the motions to dismiss and intervention. Oral argument on these motions was held in December 2015. App.10a.

In March 2016, Plaintiffs sought leave to amend their complaint. App.11a. This was granted in April 2016, and the district court denied the pending motions to dismiss as moot. App.11a. The first amended

complaint, therefore, is the operative complaint and is reproduced at App.62a–117a.

The state and federal Defendants again moved to dismiss arguing lack of standing. In September 2016, the court granted permissive intervention to the tribes. App.11a. In March 2017, it dismissed the complaint concluding that the children and parent Plaintiffs lacked Article III standing. App.34a. It did not address the redressability element of standing. Instead, the court concluded that injury-in-fact and fair-traceability elements had not been met. App.20a, 24a, 25a, 26a, 29a, 30a. The children and parent Plaintiffs appealed.

D. Ninth Circuit decision

The Ninth Circuit affirmed, but on different grounds. It concluded that although "[a]doption proceedings were pending at all times during the litigation in the district court," it would "not reach the standing inquiry." App.2a–3a. It concluded that the case was moot because "[t]he relief Plaintiffs sought to redress their alleged injuries [wa]s no longer available to them." App.3a.

The court of appeals reasoned that because all three adoptions had been finalized, the case had been rendered moot because *prospective* relief was no longer available ("plaintiffs are no longer subject to ICWA," App.3a) or was not sought ("plaintiffs . . . do not allege that they will be [subject to ICWA] in the imminent future," App.3a).

But with regard to the children and parents' claim for *retrospective* relief, it concluded that a Title VI damages claim "tacked on solely to rescue the case from mootness" renders the case nonjusticiable. App.4a. It derived that notion from this Court's statement in *Arizonans for Official English v. Arizona*, 520 U.S. 43, 71 (1997), that "a claim for nominal damages . . . asserted solely to avoid otherwise certain mootness, b[ears] close inspection." App.4a.

As for the declaratory-judgment claim, the court did not address it. Thus, while the district court addressed only the injury-in-fact and fair-traceability elements of Article III standing, the Ninth Circuit addressed only mootness. App.3a.[1]

REASONS FOR GRANTING THE PETITION

The question before this Court is one of mootness. The children and parents ask this court whether their remaining claims for relief—retrospective damages and declaration—survive when their claim for prospective injunctive relief is no longer available or sought. If those claims do survive, the case is not moot, and on remand the lower court will have to determine in the first instance whether the district court erred in concluding that the Plaintiffs do not have Article III standing.

[1] *See Arizonans for Official English*, 520 U.S. at 66–67 (court may assume without deciding that standing exists in order to analyze mootness).

Certiorari should be granted because circuit courts are intractably divided, the question presented is critically important and recurring, this case is an ideal vehicle to resolve the question, and because the decision below is wrong on multiple levels.

I. The decision below deepens a recognized conflict in the circuits and directly contravenes this Court's precedents.

Central to the lower court's analysis is the fact that "Plaintiffs' adoptions [have] all bec[o]me final." App.3a. But the finalizing of the adoptions could not make the Plaintiffs whole, or deprive the district court of power to grant them relief under civil-rights laws. Adoption was not the "relief Plaintiffs sought" in federal court. *Id.* They sought, in addition to injunctive relief, damages and declaratory relief for *past* injury, because the challenged ICWA and state-law provisions should not have been applied to their cases, and such application was unconstitutional.

Civil-rights laws explicitly provide for such relief: Title VI authorizes damages for one who has been "subjected to" discriminatory laws in the past. 42 U.S.C. § 2000d. The completion of the adoptions is immaterial with regard to the Plaintiffs' past injuries. It did not redress those injuries or render it impossible for federal courts to remedy those injuries.

These retrospective-relief claims were live during all periods of this suit and continue to remain alive. The Ninth Circuit leaped to conclude that the "relief

Plaintiffs sought" was "no longer available to them." App.3a. But that holding deepens an acknowledged conflict in the circuits and directly contravenes this Court's precedents.

Usually Title VI cases in this Court provide no occasion to distinguish between prospective- and retrospective-relief claims, thus giving this Court no occasion to resolve the question this Court expressly reserved in *Lesage*. *See*, *e.g.*, *Grutter v. Bollinger*, 539 U.S. 306, 317 (2003) (Plaintiff had requested retrospective and prospective relief under, *inter alia*, Title VI); *Gratz v. Bollinger*, 539 U.S. 244, 252 (2003) (same).

This case presents such an occasion. The lower court concluded that the prospective-relief claim based on allegations of continuing violation of federal law was moot because the parent Plaintiffs were successful in adopting the children Plaintiffs. But based on this conclusion, it held that the retrospective-relief claims based on *past* violations of federal law were also moot. App.3a–4a. This conclusion cannot be squared with any of this Court's cases. It also deepens several circuit splits that have percolated and persisted in the courts of appeals for decades.

A. Courts are intractably divided on the question of whether a sole claim for damages, however labeled, keeps the case alive.

A troubling thread runs through the lower court's decision. It concluded that the Title VI damages claim was moot because it is a claim for *nominal* damages, and suggested that had Plaintiffs "alleged actual or punitive damages," the court might have reached the opposite conclusion. App.4a. The court cited *Bernhardt v. County of Los Angeles*, 279 F.3d 862 (9th Cir. 2002) to support this point. In *Bernhardt*, the court noted, the complaint alleged claims for injunctive relief (which subsequently became moot) and "claims for compensatory and punitive damages." App.4a. But this disdain for nominal damages is unwarranted.

1. The idea that nominal-damage claims become moot while actual, compensatory, or punitive damage claims do not, finds no support in the vast majority of circuits that have addressed the issue. But there is an entrenched circuit split on this point. With this decision, the Ninth Circuit joined the Seventh and Eleventh Circuits in placing claims for nominal damages on a lower rung than claims for other types of damages. Other circuits have ruled to the contrary.

CMR D.N. Corp. v. City of Philadelphia, 703 F.3d 612, 622 (3d Cir. 2013) (citation omitted), held that "[c]laims for damages are retrospective in nature—they compensate for past harm. By definition, then, such claims cannot be moot." *Zatler v. Wainright*, 802

F.2d 397, 399 (11th Cir. 1986), held that release of the Plaintiff from prison mooted his claim for prospective injunctive relief but his claim for damages for past assaults remained alive. And the Second Circuit has held that an agreement to make employee benefits for the future (which is analogous to the adoptions getting finalized here) did not moot the claims to recover past payments. *Ottley v. Sheepshead Nursing Home*, 784 F.2d 62, 66 (2d Cir. 1986). *DeLancy v. Caldwell*, 741 F.2d 1246, 1247 (10th Cir. 1984) concluded that provision of a state-court transcript mooted the Plaintiff's demand for an injunction requiring the transcript, but did not moot his retrospective claim for damages for delay. Similarly, release of a prisoner on parole mooted his claim for injunctive relief against his prison classification, but did not moot his claim for damages. *Lucas v. Hodges*, 730 F.2d 1493, 1497 (D.C. Cir. 1984). And the Plaintiff's graduation from high school did not moot an action for damages challenging a rule restricting his eligibility to play football. *Niles v. Univ. Interscholastic League*, 715 F.2d 1027, 1030 n.1 (5th Cir. 1983).

In contrast, the Seventh Circuit has concluded that "[i]t is well settled that a viable claim for monetary relief, with the possible exception of a claim for only nominal or insubstantial damages, preserves the saliency of an action." *Sanchez v. Edgar*, 710 F.2d 1292, 1295–96 (7th Cir. 1983). And the Eleventh Circuit, acknowledging this well-developed circuit split, has concluded that nominal damages, if not coupled with some other relief, do not keep cases alive. *Flanigan's Enters.,*

Inc. v. City of Sandy Springs, 868 F.3d 1248 (11th Cir. 2017) (*en banc*).

But this Court has said that there is no such "two-tiered system of constitutional rights," *Memphis Community School District v. Stachura*, 477 U.S. 299, 309 (1986), because there is no such thing as "damages based on the 'value' or 'importance' of constitutional rights." *Id.* at 309 n.13. This is because damages available for alleged violations of constitutional rights "are not truly compensatory" anyway. *Id.* Thus, even if we were to label a damages award as "compensatory" it is hard to put a dollar value on intangible injuries such as emotional distress and humiliation as compared to tangible injuries like a broken leg.

For this reason, lower courts have treated the difference between nominal and compensatory damages as a question of the *degree of evidence* presented to show the actual damages suffered.[2] That is to say, once a constitutional violation is established, insufficient evidence to establish actual injury (or sufficient evidence establishing great difficulty in proving damages) will result in an award of only *nominal* or *presumed* damages. But if the trier of fact is given sufficient evidence of actual harm, then compensatory or actual damages are recoverable.

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[2] *See Price v. City of Charlotte*, 93 F.3d 1241 (4th Cir. 1996); *Sykes v. McDowell*, 786 F.2d 1098 (11th Cir. 1986); *Stewart v. Furton*, 774 F.2d 706 (6th Cir. 1985); *Trevino v. Gates*, 99 F.3d 911, 921–22 (9th Cir. 1996); *Parrish v. Johnson*, 800 F.2d 600 (6th Cir. 1986).

This case, which comes here from a motion to dismiss, thus far has only well-pleaded allegations of actual harm. Therefore, no federal court can yet say "beyond doubt that the plaintiff[s] can prove no set of facts in support of [their] claim which would entitle [them] to relief." *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957). The issue is not whether the children and parents "will ultimately prevail but whether [they are] entitled to offer evidence to support the claims." *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

2. Unlike the Ninth, Seventh, and Eleventh Circuits, other courts of appeals have held that a claim for nominal damages will survive the mootness of prospective claims. Some earlier cases seem to have suggested that a claim merely for nominal damages cannot avoid mootness,[3] but more recent decisions recognize that a claim for damages, nominal[4] or otherwise, will. *See* 13C Charles Alan Wright et al., FEDERAL PRACTICE &

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[3] *Hernandez v. European Auto Collision, Inc.*, 487 F.2d 378, 387 (2d Cir. 1973) (opn. of Timbers, J., joined by Lumbard, J.); *Kerrigan v. Boucher*, 450 F.2d 487 (2d Cir. 1971); *Doria v. Univ. of Vt.*, 589 A.2d 317, 319–20 (Vt. 1991); *Morrison v. Bd. of Educ. of Boyd Cnty.*, 521 F.3d 602, 610–11 (6th Cir. 2008); *Sanchez*, 710 F.2d at 1295–96.

[4] *Brinsdon v. McAllen Indep. Sch. Dist.*, 863 F.3d 338, 345 (5th Cir. 2017) ("The mootness doctrine . . . will not bar any claim for damages, including nominal damages."); *Bayer v. Neiman Marcus Grp.*, 861 F.3d 853, 868–74 (9th Cir. 2017); *Carver Middle Sch. Gay–Straight Alliance v. Sch. Bd. of Lake Cnty.*, 842 F.3d 1324, 1330–31 (11th Cir. 2016); *Sprint Nextel Corp. v. Middle Man, Inc.*, 822 F.3d 524, 528–29 (10th Cir. 2016); *Cent. Radio Co. v. City of Norfolk*, 811 F.3d 625, 631–32 (4th Cir. 2016); *C.F.* ex rel. *Farnan v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 983–84 (9th Cir. 2011).

PROCEDURE § 3533.3 nn.46–47 (3d ed. 2017) (collecting cases).

In *Utah Animal Rights Coalition v. Salt Lake City Corp.*, 371 F.3d 1248, 1257–58 (10th Cir. 2004), Judge McConnell wrote the majority opinion concluding that a retrospective nominal-damage claim of $1 prevented the case from becoming moot when the prospective-injunctive-relief claim had been mooted. Judge McConnell also wrote a separate concurrence calling upon this Court to rule that retrospective nominal-damage claims do not keep a case or controversy alive. *Id.* at 1262–71 (McConnell, J., concurring). Judge Henry wrote a separate concurring opinion, *id.* at 1271–75 (Henry, J., concurring), explaining why "a claim for nominal damages in a constitutional case may vindicate rights that should be scrupulously observed, and hence, such a case is not, nor should it be, moot." *Id.* at 1275 (Henry, J., concurring).

This split has developed and percolated ever since this Court decided *Carey v. Piphus*, 435 U.S. 247, 248–51 (1978), which held that a plaintiff is "entitled to recover nominal damages" in such situations. Two students alleged that their school suspended them without due process. *Id.* They did not allege that they would be suspended in the imminent future, thus foreclosing prospective relief. *Id.* Yet they were "entitled to recover nominal damages" to vindicate their right to due process that was violated in the past. *Id.* at 247–48.

Stachura, 477 U.S. at 308 n.11, reaffirmed *Carey* and held that the same rule governs Section 1983 claims alleging the deprivation of *any* constitutional right. Nominal damages to redress past wrongs remain "the appropriate means of 'vindicating' rights" even where no allegation of future harm is made.

3. The post-*Stachura* decisions have been split. Some courts have been hostile to the suggestion that presumed damages, outside the voting rights context, survive *Stachura*.[5] Other courts see *Stachura* as leaving room for presumed damages.[6] Yet others see presumed damages as a surrogate for actual or compensatory damages when there is evidence that the plaintiff suffered an actual injury resulting from the constitutional violation, but the difficulty lies in the ability to measure the scope and extent of the injury.[7] A similar approach has been taken with respect to

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[5] *Schneider v. Colegio de Abogados de Puerto Rico*, 917 F.2d 620, 639 (1st Cir. 1990) (allowing only nominal damages award for the violation of First Amendment guarantees when the plaintiff offered no proof of actual injury), *cert. denied*, 502 U.S. 1029 (1992); *Spence v. Bd. of Educ. of Christina Sch. Dist.*, 806 F.2d 1198, 1200 (3d Cir. 1986) (refusing to presume distress damages from violation of First Amendment Constitutional right).

[6] *Kerman v. City of N.Y.*, 374 F.3d 93, 129–30 (2d Cir. 2004); *Hessel v. O'Hearn*, 977 F.2d 299, 301–02 (7th Cir. 1992) (Posner, J.) (suggesting that *Stachura* may not bar presumed damages for violations of the Constitution).

[7] *Pembaur v. City of Cincinnati*, 882 F.2d 1101, 1104 (6th Cir. 1989) (holding, post-*Stachura*, that presumed damages may be appropriate when they "approximate the harm that the plaintiff suffered and thereby *compensate* for harms that may be impossible to measure" (emphasis added)).

nominal damages awards that are presumed or presumed to compensate for a violation of the Plaintiff's rights.[8]

In the four decades since *Carey*, several courts of appeals have concluded that the absence of a live claim for *pro*spective relief is irrelevant to courts' power to decide nominal-damages claims for *retro*spective relief. Indeed, "the denial of" an asserted protected right is "actionable for nominal damages." *Carey*, 435 U.S. at 266. *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983), for example, held that the Plaintiff's lack of standing to pursue injunctive relief did not mean that a "claim for damages" could not "meet all Article III requirements." And *Powell v. McCormack*, 395 U.S. 486, 497 (1969), held that "[w]here one of the several issues presented becomes moot, the remaining live issues supply the constitutional requirement of a case or controversy."

This rule has been applied in cases involving a wide spectrum of claims—all of which conflict with the decision below. *See*, *e.g.*, *Green v. McKaskle*, 788 F.2d 1116 (5th Cir. 1986) (prison conditions); *Morgan v. Plano Indep. Sch. Dist.*, 589 F.3d 740 (5th Cir. 2009) (religious speech). And lower courts have held that it applies regardless of the reason the prospective-relief claim became moot. *See*, *e.g.*, *Brinsdon*, 863 F.3d at 345–46 (nominal-damages claim was live despite

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[8] *Briggs v. Marshall*, 93 F.3d 355, 360 (7th Cir. 1996) (noting these different variants or purposes of awarding nominal damages).

student's graduation); *Advantage Media, LLC v. City of Eden Prairie*, 456 F.3d 793, 803 (8th Cir. 2006) (nominal-damages claim was live despite city's amendment of the challenged ordinance). For instance, a Plaintiff seeking both reinstatement and back pay for alleged discrimination can continue to pursue the case even if reinstatement is granted or no longer sought. *Firefighter's Local Union No. 1784 v. Stotts*, 467 U.S. 561, 568–70 (1984). That is true even if a small amount of money is involved because the "amount of money . . . at stake does not determine mootness." *Id.* at 571.

This rule makes sense because whether a case or controversy exists or is moot is determined claim-by-claim, not "in gross." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). This means that a mooted *claim* for prospective relief (here, injunction) should not affect a separate, live *claim* for retrospective relief (here, declaration and damages).

The Declaratory Judgment Act also provides another reason why this should be the rule: 28 U.S.C. § 2201(a), in plain words, states that declaratory relief is available "whether or not further relief is or could be sought." This rule should carry all the more force in Title VI cases because the statute itself, 42 U.S.C. § 2000d-7, provides for retrospective relief. Congress has expressly authorized federal courts to provide *all* legal and equitable remedies "to the same extent" as are available "against any public or private entity," and removed the Eleventh Amendment bar to recovering damages paid out of the state treasury. *Id.*

The court below, instead, used the controversy-ending event that rendered the Plaintiffs' *prospective*-relief claim moot to assume that the same event renders the Plaintiffs' *retrospective*-relief claim moot. App.3a. But federal courts have "not merely the power but the *duty* to render a decree which will so far as possible eliminate the discriminatory effects of the past." *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975) (emphasis added). And that duty is expressly preserved if not enhanced by the text of Title VI.

Lower courts have accordingly held that a nominal-damages claim for past violations of constitutional and statutory civil rights remains alive even if the defendant ceases to act in a way that injures the plaintiff—a point on which the circuit split is well-developed, as explained above. Because retrospective-relief claims such as a claim for nominal damages or declaration exist to vindicate the plaintiff's rights, *Bayer*, 861 F.3d at 872, the fact that the defendant later changes his conduct or that facts have changed such that the plaintiff's *compensatory* claim or other injuries are remedied does not render a properly pleaded nominal-damages claim moot.

Ultimately, under this Court's precedents, the distinction between nominal damages and other types of damages—compensatory, actual, presumed, punitive, exemplary, etc.—is not salient for ascertaining Article III questions. At the merits stage, an award of damages can be nominal as to amount but compensatory as to purpose. And the mootness inquiry does not devolve into a game of which adjective is appended to the word

"damages." The "*amount* of money" has no bearing on "mootness." *Stotts*, 467 U.S. at 571 (emphasis added). And a prayer for $1 in damages does not automatically render that claim a claim for "nominal damages." *Crue v. Aiken*, 370 F.3d 668, 677 (7th Cir. 2004) (characterizing an award of "$1,000 to plaintiffs" as "nominal damages"); *see also Farrar v. Hobby*, 506 U.S. 103, 121 (1992) (O'Connor, J., concurring) (noting "nominal relief does not necessarily a nominal victory make"). The actual monetary value of the retrospective damages award is "determined according to principles derived from the common law of torts," *Stachura*, 477 U.S. at 306, which is and should be a liability-phase question, not a mootness or Article III question.

B. Lower courts are divided on the question of whether retrospective declaratory relief, either standing alone, or as a "predicate" of retrospective damages relief, keeps cases alive.

The lower court did not separately consider availability of retrospective declaratory relief. App.3a–4a. Under this Court's precedents and some lower-court decisions, that question remains open.

In *Gratz*, Plaintiffs had requested retrospective declaratory relief asking the court to "find[] that respondents violated [their] 'rights to nondiscriminatory treatment.'" 539 U.S. at 252. There was no need to separately decide that question in *Gratz*. This Court assumed that such relief is available.

In *Lippoldt v. Cole*, 468 F.3d 1204, 1217–18 (10th Cir. 2006), the court held that parade participants lacked standing to seek a permanent injunction after the district court issued a temporary restraining order and ordered the city to allow the parades. Once the plaintiffs held the parades, they lacked standing to seek a permanent injunction, and the plaintiffs had not alleged a concrete, present plan to apply for another permit in the future. However, the parade participants' claim for *declaratory* relief that the city violated the First Amendment by denying applications for parade permits did not become moot after the parades were held. *Id.* at 1217. And *Crue v. Aiken*, 370 F.3d 668, 677 (7th Cir. 2004), held that when the claim for prospective injunctive relief is moot, a declaratory judgment as a predicate to a retrospective damages award survives.

The lower court seems to have assumed that the Plaintiffs' declaratory-relief claim is a predicate of the injunctive-relief claim, which is "now moot." App.3a–4a. But as *Crue* demonstrates, declaratory judgments do not always have to go hand-in-hand with injunctive relief; they can be "a predicate to a damages award." 370 F.3d at 677. Judge Henry in *Utah Animal Rights*, 371 F.3d 1248, provided a comprehensive analysis of why retrospective declaratory relief, apart from or in conjunction with any damages relief, keeps a case alive: "Our society still recognizes that constitutional rights may have to be declared, even if they do not give rise to easily calculated damages." *Id.* at 1275 (Henry, J., concurring). This Court has also touched upon the

question of availability of retrospective declaratory relief as a predicate to retrospective damages relief in *Wolff v. McDonnell*, 418 U.S. 539 (1974).

Wolff, a Section 1983 case, involved the administration of a state prison. The Court held that the "actual restoration of good-time credits," 418 U.S. at 554—like the actual adoption of children Plaintiffs by the parent Plaintiffs—is a remedy available in state court, not in federal court. But a claim for retrospective "damages" under 42 U.S.C. § 1983 against a political subdivision was properly brought in federal court and was alive. 418 U.S. at 554. Because the damages claim "required determination of the validity of the procedures employed," "a declaratory judgment as a predicate to a damages award" is also available where prospective injunctive relief is foreclosed. *Id.* at 554–55.

And *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 8–9 (1978), another Section 1983 case decided four years after *Wolff*, expressly reserved this question. As the *Memphis Light* litigation progressed, the plaintiffs' claims for prospective relief became moot. *Id.* at 8 & n.7. But plaintiffs' "damages and declaratory relief" claims remained. *Id.* at 8. Without deciding whether retrospective declaratory relief is available and saves the case from mootness separate and apart from any damages relief that remains alive, *Memphis Light* concluded that the plaintiffs' claim for "damages . . . saves this cause from the bar of mootness." *Id.*

This Court has not expressly extended *Wolff* and *Memphis Light* to cover Title VI retrospective damage claims, and retrospective declaratory-judgment claims that either stand alone, or act as a "predicate" to the retrospective-damages claim. This case presents a clean vehicle to decide whether the *Wolff* and *Memphis Light* rule should be extended to Title VI cases, a question on which the split in lower courts has long percolated.

C. The tension between *Arizonans for Official English* and *Texas v. Lesage*, *Carey v. Piphus*, and *Stachura* needs to be reconciled.

The lower court's decision not only deepens the unresolved circuit split and departs from several of this Court's cases, it also stretches this Court's decision in *Arizonans for Official English* beyond recognition. The court below reasoned that if "a claim for nominal damages [is] asserted solely to avoid otherwise certain mootness," then such a claim "b[ears] close inspection." App.4a (quoting *Arizonans for Official English*, 520 U.S. at 71). The lower court's reasoning brings to light the tension between that case and cases such as *Lesage*, *Carey*, and *Stachura*—a tension that this Court should grant certiorari to resolve.

In *Arizonans for Official English*, a government employee "commenced and maintained her suit" challenging the constitutionality of Arizona's official-English law. 520 U.S. at 48. She then left the state's employ,

which "made her claim for prospective relief moot." *Id.* The Ninth Circuit had "read into" her complaint "a plea for nominal damages" which her complaint did "not expressly request," *id.* at 48, 60, and had "ultimately announced" that she was "entitled to nominal damages" as the only surviving retrospective-relief claim. *Id.* at 63.

When the case came to this Court, it concluded that the nominal-damages relief the Ninth Circuit implied in the complaint "was nonexistent" because "§ 1983 creates no remedy against a State." *Id.* at 69. The most straightforward way to read that portion of *Arizonans for Official English* is that it dealt with unavailability of retrospective relief against state officials due to settled immunity doctrines. But *Arizonans for Official English* leaves open the question of whether that rule applies in Title VI cases, which expressly abrogates Eleventh Amendment immunity.

In extending *Arizonans for Official English* and applying it to the Plaintiffs' Title VI claims, the lower court extended its reach beyond recognition, and imposed the no-retrospective-relief limit derived from Section 1983, *Edelman*, and *Ex Parte Young*, on Title VI cases where it does not apply. Indeed, Congress (using its Fourteenth Amendment § 5 power) has specifically relaxed any such limit, at least in cases involving discrimination based on "race, color, or national origin," as this one does. 42 U.S.C. § 2000d.

There are also good reasons to cabin *Arizonans for Official English* to its facts, given the procedural

anomalies in that case. There, the Ninth Circuit allowed the case to proceed to the merits under an *implied* Section 1983 retrospective-damages prayer for relief. It compounded that error by assuming such relief lies against "an intervenor the court had designated [as] a nonparty," against whom the lower court "nevertheless" imposed "an obligation to pay damages." 520 U.S. at 70.

Given that odd procedure, this Court, unremarkably, concluded that "[i]t should have been clear to the Court of Appeals that a claim for nominal damages, extracted [*by the court*] late in the day from [the] general prayer for relief and asserted solely to avoid otherwise certain mootness, bore close inspection." *Id.* at 71. The court below ignored this context when it concluded that the Plaintiffs' retrospective-relief claims were moot. App.4a.

Here, the children and parents expressly stated a claim for retrospective declaratory and nominal-damages relief under Title VI—not under 42 U.S.C. § 1983 as in *Arizonans for Official English*. App.112a. That claim was asserted by the Plaintiffs (not devised by the court from the general prayer for relief as in *Arizonans for Official English*) in the first and only amended complaint filed at a time when all but C.C.'s child-custody proceedings were pending. App.113a, App.73a. And Plaintiffs asserted that claim against a full-fledged party defendant, not against a nonparty participant as in *Arizonans for Official English*. App.111a. *Arizonans for Official English*, simply put, is not on point. But given the confusing nature of that precedent, it is

likely that other lower courts will interpret it in a similarly misguided fashion. This Court should prevent that consequence by making clear that the mootness question involved here and in many other civil rights cases should be decided based on the sound foundation provided by *Lesage*, *Carey*, and *Stachura*.

II. Review is needed because the decision below implicates critically important personal liberties guaranteed by the Constitution.

1. Implicit in the Ninth Circuit's decision is the assumption that getting their adoptions finalized is an adequate and exclusive remedy and that no further remedy is therefore available in federal court. But if that is true, federal courts could never address whether a Plaintiff was wronged *after* the injury is complete. Federal prison reform litigation would never happen, for example. Constitutionality of bond hearings would never be decided by federal courts. *Cf. Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).

2. The question is important and recurring. As our society distances itself from the overt race-, color-, or national-origin-based discrimination of the past, instances of such discrimination are thankfully one-off occurrences that are not sustained over a long course of time. While that is a good thing, the result is that, if the lower-court decision stands, such instances will go unredressed under Title VI, which was designed to uproot such *de jure* discrimination. In other words, under the decision below, once discrimination has occurred,

and a Plaintiff seeks redress, her prayer for retrospective damages or declaratory relief for *past* injury will be mooted by a Defendant changing its *future* conduct—with the result that federal courts cannot redress as deplorable a wrong as racial discrimination.

Such an outcome would frustrate Congress' purpose in enacting Title VI. It did not want any state agencies receiving federal financial assistance to take federal taxpayer money to pursue *de jure* discrimination based on the race, color, or national origin of the persons such an agency regulates. Before Title VI's enactment, no damages were recoverable in such situations. Rosa Parks, who was prosecuted for sitting in the wrong section of the bus due to her skin pigmentation, could obtain only forward-looking relief. *See*, *e.g.*, *Browder v. Gayle*, 142 F. Supp. 707 (M.D. Ala. 1956), *affirmed sub nom. by*, *Owen v. Browder*, 352 U.S. 903 (1956). Governmental bodies against whom such suits were brought could easily moot the forward-looking claims by confessing error and ceasing the complained-of conduct, or by pointing to the on-principle decision of people like Parks to not take the bus until the segregation was halted, and use that to show that no prospective relief could be awarded. That is no longer the law—but will be, if the decision below is not reversed.

Put differently, the lower court's decision would require Plaintiffs to make allegations to keep prospective-relief claims alive. The parents here, who do not have Indian ancestry, would need to allege they will make an expressly race-, color-, or national-origin-based decision in the future and seek foster or adoptive

placement of another "Indian child," 25 U.S.C. § 1903(4), in the future. And Plaintiffs like the children, whose adoptions are now final, would have to allege they will seek race-, color-, or national-origin-blind foster or adoptive placements in the future. That is both absurd and contrary to the whole point of retrospective relief under Title VI—which is to point to how government actors discriminated against Plaintiffs in the past and violated the rights guaranteed to them by the Constitution.

3. The lower-court decision "confuses mootness with the merits." *Chafin v. Chafin*, 133 S. Ct. 1017, 1024 (2013). The argument that an action is moot because the plaintiff is not entitled to the requested relief—"[t]he relief Plaintiffs sought to redress their alleged injuries is no longer available to them," App.3a—is no more than an argument on the *merits*, and should be decided on the merits, not on appeal from a motion to dismiss.

4. The decision below not only implicates "fundamental principles of justiciability," *Utah Animal Rights*, 371 F.3d at 1263 (McConnell, J., concurring), it also implicates "equal protection concerns," *Adoptive Couple v. Baby Girl*, 570 U.S. 637, 656 (2013), and individual rights guaranteed by the First, Fifth, Tenth, and Fourteenth Amendments. The Indian Child Welfare Act ("ICWA"), 25 U.S.C. §§ 1901–1963, creates a two-track system under which the child-custody proceedings of children classified as "Indian" are conducted under a different and substandard set of substantive and procedural rules than those of all other children.

The ICWA statutory scheme subordinates an individualized best-interest determination of Indian children to the interests of the tribes. In contrast, the best interest of a child is given foremost consideration in child-custody cases of all other children that arise out of foster care placements.

Under ICWA, Indian children must be placed in a race-, color-, or national-origin-matched foster or adoptive home. 25 U.S.C. §§ 1915(a)–(b). For all other children, that determination is based on a child's particular and individualized circumstances and best interests. This Court addressed one part of the troubling problem of "put[ting] certain vulnerable children at a great disadvantage solely because an ancestor—even a remote one—was an Indian." *Adoptive Couple*, 570 U.S. at 655. But tribes and state agencies have not received the message yet.

Under ICWA's placement-preferences provisions, tribal officials repeatedly proposed race-matched foster and adoptive placements for these Plaintiff children. In A.D.'s case, GRIC sought several such placements. All of them "fell through." *GRIC v. Dep't of Child Safety*, 379 P.3d 1016, 1019 n.8 & n.9 (Ariz. App. 2016), *affirmed by*, 395 P.3d 286 (Ariz. 2017). In C.C.'s case, the Navajo Nation repeatedly proposed race-, color-, or national-origin-matched placements, all of which turned out—after protracted "active efforts" were taken—to be inappropriate. App.72a–73a ¶¶ 26–27. In L.G. and C.R.'s case, GRIC similarly proposed alternative placements. App.75a–76a ¶ 39.

The *de jure* discriminatory treatment does not end there. With placement preferences come active efforts, 25 U.S.C. § 1912(d), and termination of parental rights, 25 U.S.C. § 1912(f). Which means, in order to comply with ICWA, the children Plaintiffs who were happy in the foster homes of the parent Plaintiffs, and considered them their mom and dad in the true sense of those words, had to visit with strangers, and face the trauma of separation from the only family they had ever known. In addition, A.D., S.H., and J.H., faced unique injuries under the jurisdiction-transfer provision, 25 U.S.C. § 1911(b).

Under such circumstances, the fact that their adoptions were ultimately finalized by state courts is hardly a redress for the systemic and systematic discrimination they underwent throughout. To put it simply, the Plaintiffs were forced to jump through additional hoops to complete their adoptions—hoops they would not have had to jump through if the children had been white, black, Asian, or Hispanic or the foster parents had been race-, color-, or national-origin-matched with the children. The fact that they made it through that race-, color-, or national-origin-based obstacle course cannot defeat their claim for damages for being forced to go through it.

If the fact of adoption truly provides complete and exclusive redress for these injuries, it is tantamount to saying that Homer Plessy's injury was not redressable because, after all, he got to ride the train, albeit in a segregated coach. *Plessy v. Ferguson*, 163 U.S. 537 (1896). Obviously, that is not true, because *Plessy*

reached the merits even though it reached the wrong result. Getting to ride the segregated coach of the East Louisiana Railway company—or ICWA—cannot moot such cases.

III. This case is an ideal vehicle.

This case is an ideal vehicle to resolve the question. The case comes to this Court from the trial court's grant of a motion to dismiss for lack of standing. No factual disputes that would change the outcome on the merits, or muddy the waters on the question presented, exist yet. The only pertinent jurisdictional facts to answer the presented question are: The children Plaintiffs are classified as "Indian children." Their then-foster (now adoptive) parents, have no Native American ancestry. Because their adoptions are now final, they do not seek prospective injunctive or declaratory relief. They only claim retrospective damages and declaratory relief. Moreover, the question presented is central to the lower-court decision—and confusion—such that reversal would give the children and parents significant relief. They ask this Court to clarify only whether damages and declaratory relief is available such that the case remains alive, not whether such relief is ultimately recoverable on the merits in this case.

Retrospective declaratory and damages relief under Title VI remains a critically important, and perhaps the only remedy available to vindicate past violations of civil rights. This is especially true in race-, color-, or national-origin-discrimination cases such as this one.

The question involves bedrock principles of Article III jurisdiction, and however resolved, will affect countless individuals and government officials, and will be a pathmarker informing litigants on how to effectively plead (or seek dismissal of) retrospective relief in Title VI cases in federal court. Certiorari should, therefore, be granted.

This case is also the better vehicle to resolve the question than, say, *Davenport v. City of Sandy Springs*, No. 17-869, *cert. denied*, 138 S. Ct. 1326 (2018). In the Section 1983, not Title VI, context, *Davenport* asked the question whether "the mootness of claims for prospective relief renders federal courts powerless to decide a claim for nominal damages." Pet. i, 2017 WL 6492872. There, the *en banc* Eleventh Circuit had acknowledged that there is intractable conflict among the circuit courts on the question of whether "nominal damages alone can save a case from mootness." *Flanigan's Enters.*, 868 F.3d at 1265 ("a majority of our sister circuits to reach this question have resolved it differently than we do today").

This case is a cleaner vehicle than *Davenport* for two reasons. One: *Davenport* was truly moot. The Eleventh Circuit panel had decided the merits, and a week after the court decided to hear the case *en banc*, the city repealed the relevant portion of the challenged ordinance. Two: unlike *Davenport*, where only the Section 1983 nominal-damage claim was extant, here, Plaintiffs claim damages and declaratory relief under Title VI and the Declaratory Judgments Act. The Eleventh Circuit's decision in *Davenport* only deepens the

intractable conflict on a fundamental and recurring question of constitutional law.

IV. The decision below is wrong.

The decision below marks a sea change in how courts analyze mootness. Pegging its analysis on *Arizonans for Official English*, the Ninth Circuit created a brand new "belated[ness]" factor to determine mootness. App.3a–4a. Because the Title VI claims were added in the first and only amended complaint and did not appear in the original complaint, the court below concluded that such a "belated addition of a claim" does not keep the case alive. App.3a. This belatedness analysis finds no support in governing law.

On the contrary, the whole point of "freely giv[ing] leave" to amend complaints, Fed. R. Civ. P. 15(a)(2), is to permit amendment of pleadings for virtually any purpose, including to add claims, alter legal theories or request different or additional relief. *Foman v. Davis*, 371 U.S. 178, 181–82 (1962). Indeed, an "amendment [that] asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out . . . in the original pleading" "*relates back* to the date of the original pleading." Fed. R. Civ. P. 15(c)(1)(B) (emphasis added). Such relation back is "mandatory" and not left to the court's "equitable discretion." *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538, 553 (2010); *Tiller v. Atlantic Coast Line R. Co.*, 323 U.S. 574, 580–81 (1945) (applying relation back specifically under Rule 15(c)(1)(B)).

Other than *Arizonans for Official English*, the court below provided no basis for creating a belatedness factor to evaluate mootness. Even the case it cited to support this new factor—*Bernhardt*, 279 F.3d 862—does not support it. There, the court held that a claim for "compensatory, punitive *or* nominal damages . . . presents a sufficient live controversy to avoid mootness." *Id.* at 873 (emphasis added). Indeed, a contrary conclusion—that a case is moot because there is a live claim that prevents the case from becoming moot—would have defied logic.

This Court has already pronounced that a case is not moot if Plaintiffs' "requisite personal interest . . . continue[s] throughout [the] existence" of the suit. *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980). The absence of a live claim for prospective relief is therefore irrelevant to a court's power to issue retrospective relief. *Carey*, 435 U.S. at 266–67. The court below jettisoned this well-honed rule and, in conflict with other circuits, fashioned a rule whereby the controversy-ending event that rendered moot Plaintiffs' prospective-relief claims also moots their retrospective-relief claims. App.3a–4a.

This exceptionally important question warrants review. There is an acknowledged and irreconcilable split among the courts of appeals that can only be settled by this Court. This case presents an ideal vehicle to resolve the question given a lower-court decision that is plainly wrong.

CONCLUSION

The writ should be granted.

Respectfully submitted, in January 2019.

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