Per Curiam

SUPREME COURT OF THE UNITED STATES

No. 05–72

ULTIMAN1, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES GOVERNMENT

[August 15, 2018]

PER CURIAM.

The Court granted certiorari in this case to decide whether §§303–304 of the Consolidated Appropriations and Authorizations Act of August 2018[1] violated the Due Process Clause or the separation of powers doctrine. The following day, Congress passed—and the President signed—the Executive Reform Act.[2] §208 of the ERA repealed the provisions of the appropriations bill which were at issue in this case, replacing their broad delegations of power with an expressly organized Bar structure, comprising a combination of Executive and Judicial officials. The question now before us is whether this development renders the case at bar moot. We conclude that it does and dismiss the writ of certiorari.

I

The ordinary jurisdiction of a federal court is limited to the resolution of actual cases and controversies. U. S. Const. Art. III, §2, cl. 1. We have, by convention, applied

[1] We refer to this Act as the "appropriations bill" in this opinion for convenience.

[2] We refer to this Act as the "ERA" in this opinion for convenience.

this requirement to suits arising under our separate Anytime Review Clause jurisdiction as well. See *Heave* v. *United States*, 5 U. S. ___, ___ (2018) (slip op., at 1); *George* v. *United States*, 5 U. S. ___, ___ (2018) (plurality opinion) (slip op., at 2). Pursuantly, litigants are required to demonstrate a "personal stake" or "legally cognizable interest in the outcome" of their case. *United States Parole Comm'n* v. *Geraghty*, 445 U. S. 388, 395 (1980) (citing *Powell* v. *McCormack*, 395 U. S. 486, 496 (1969)). While the standing doctrine evaluates this personal stake at the outset of the case, the "mootness doctrine ensures that the litigant's interest in the outcome continues throughout the life of the lawsuit." *Cook* v. *Colgate University*, 992 F. 2d 17, 19 (CA2 1993). Hence, it is a court's duty to dismiss a lawsuit as moot *only* "when it becomes impossible for the courts, through the exercise of their remedial powers, to do anything to redress the injury." *Alexander* v. *Yale University*, 631 F. 2d 178, 183 (CA2 1980).

To intelligently assess whether this is now the case, we must first identify the injury which we, in the first place, would have redressed.

A

It may be argued that no injury existed in the first place and that petitioner, from the outset, was without standing. We reject this argument. Petitioner, although he was not a licensed attorney under the previous Bar or yet subjected to any Bar requirements by the Attorney General through use of his § 304 power, faced sufficient injury to establish Article III standing.

To establish standing, a petitioner must show (1) an "injury in fact," (2) a sufficient "causal connection between the injury and the conduct complained of," and (3) a "likel[ihood]" that the injury "will be redressed by a favorable decision." *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992). An injury sufficient to satisfy Article III

must be "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical.'" *Id.*, at 560. Allegations of future injury may suffice if the threatened injury is "certainly impending," or there is a "'substantial risk' that the harm will occur." *Clapper* v. *Amnesty Int'l USA*, 568 U. S. ___, ___, ___, n. 5 (2013) (slip op., at 10, 15, n. 5). In conducting this analysis, we must not forget: "[W]here threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat." *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U. S. 118, 128–129 (2007).[3]

Petitioner's petition for certiorari alleged that § 304 of the ERA worked both a procedural due process and a separation of powers violation.[4] As to the former, petitioner asserts that there is a constitutionally-cognizable liberty interest in the "free and fair practice of law." Pet. for Cert. 4. While we are careful not to confuse the case's "merits" with justiciability issues like "standing," *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 92 (1998) (citing *Northwest Airlines, Inc.* v. *County of Kent*, 510 U. S. 355, 365 (1994)), recognizing the substantial probability that such a liberty interest exists goes a long way in establishing petitioner's "interest in the [case's] outcome," as required by cases like *Geraghty*. 445 U. S., at 395.

---

[3] It is also bears emphasizing that in cases arising under the Anytime Review Clause, our precedents have accepted a less rigorous form of standing than is applied in ordinary cases.

[4] The separation of powers arguments, although we do not address them in any detail here, do raise legitimate concerns. First, petitioner's argument that the placement of the Bar in Executive Branch control violates the separation of powers doctrine has merit. Second, there are additional concerns which arise in light of the fact that the directives which § 303 purported to repeal were issued by THE CHIEF JUSTICE in exercise of not only his statutory authority, but also his implied constitutional authority as administrative head of the judicial system to oversee the courts and the legal practice.

Petitioner argues that *any* requirement of Bar membership to practice law places a "substantial burden" on the putative liberty interest in the free and fair practice of law. Pet. for Cert. 4. He accordingly says that failure to provide substantial procedural safeguards violates the Due Process Clause. That alleged violation, along with the alleged separation of powers violation, threatened to inflict concrete injuries on petitioner. Petitioner could have lost time, clients, and potentially even money. This is all clear.

The rebuttal made is that no Bar had yet been established under the auspices of §304 after the appropriation bill had been enacted. But that line of argument belies the fact that the structure of the legal practice, along with the practical needs of the judicial system, created at least a "substantial risk" that one would be established. Petitioner met *Lujan*'s injury in fact requirement.

The injury-in-fact complained of, moreover, was attributable to the §304 enactment. The procedural failures complained of by petitioner, and the resulting imminent concrete harms to him, were all a product of the framework established by §304. Prior to the appropriation bill's enactment, a different Bar system was run by the Judiciary. There is a clear nexus between §304's placement of the then-new system within Executive Branch control and the injury's petitioner has asserted. If we held invalid §304, those imminent injuries would have been redressed.

B

Now, however, §304 has been repealed by the ERA. "'Through the mere passage of time, the petitioner has obtained all the relief they sought.'" *Heave*, *supra*, at ___ (slip op., at 2) (quoting *Lane* v. *Williams*, 455 U. S. 631, 633 (1982); brackets omitted). We can no longer redress petitioner's injuries by overturning §304 as it is no longer operative due to its repeal by Act of Congress. The system established by the ERA is markedly different from the one

challenged here; even if we proceeded to decide the merits in the §304 challenge and ruled in petitioner's favor, our decision would not necessitate the conclusion that the ERA replacement is unconstitutional as well. We can no longer afford relief to petitioner in this case.

II

This case does not fall under the "voluntary cessation" exception to mootness. While it is true that "postcertiorari maneuvers designed to insulate a decision from review by this Court [are] viewed with a critical eye," *Knox* v. *Service Employees*, 567 U. S. 298, 307 (2012) (citing *City News & Novelty, Inc.* v. *Waukesha*, 531 U. S. 278, 283–284 (2001)), that skepticism should not be allowed to obfuscate our legal analysis. "A defendant's voluntary cessation of allegedly unlawful conduct" does not moot a case when it is likely that there will be a "resumption of the challenged conduct as soon as the case is dismissed." *Friends of Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 174 (2000); *Knox*, *supra*.

Here, given that Congress has replaced the §304 Bar framework with a carefully considered and "markedly different" one, *supra*, at 4, with special attention to the defects asserted in this case, it is highly unlikely that they will revert to the §304 framework the second our backs are turned. There is no real concern here that Congress will resume its allegedly unconstitutional conduct. Our analysis here expresses no view as to the constitutionality of the ERA Bar framework.

* * *

For the reasons set forth in this opinion, we dismiss the writ of certiorari as moot.

It is so ordered.