Per Curiam

SUPREME COURT OF THE UNITED STATES

No. 24–1

JTISTHEMAN4 *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[January 18, 2025]

PER CURIAM.

The judgment is affirmed by an equally divided Court.

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CHIEF JUSTICE INSLEE, concurring.

As an indigent defendant in the District Court, Petitioner jtistheman4 moved to have counsel appointed to him under the Sixth Amendment's right to assistance of counsel. The District Court denied the motion. Petitioner sought appeal of the interlocutory order and we granted certiorari. Whilst all these actions were transpiring, proceedings in the District Court continued and petitioner was eventually afforded counsel. This makes the appeal moot and I would dismiss it as such.

If the *per curiam* opinion was instead a Justice affirming the District Court, I would concur in judgment because the lower court's judgment stands; but I would not go as far as to affirm it. JUSTICE HEWITT would find the Government in default and rule in favor of the petitioner. JUSTICE FEELINGS would reach the merits and summarily affirm. I would dismiss the appeal as moot.[1] Both JUSTICE FEELINGS and I agree on one thing: the lower court's judgment should stand. In my view, we constitute a majority in this Court, albeit a slim one with differing rationales. But there seems

[1]For the sake of the readers, I offer brief explanations of each of the Justices desired dispositions. In doing so, it hopefully clears confusion on—or at least explains—why the *per curiam* opinion says what it says. The Court affirms the judgment below when the Justices are equally split. See, *e.g.*, *United States v. Texas*, 579 U.S. 547, 548 (2016) (*per curiam*).

to be disagreement on that too.[2] Thus, with no single agreeable disposition, the lower court's judgment is affirmed by an equally divided Court. For this reason, I concur. I briefly write here to address mootness.

The federal court's "judicial power" is confined to cases and controversies as dictated by Article III; it also "demands that an actual controversy persist throughout all stages of litigation." *Hollingsworth* v. *Perry*, 570 U.S. 693, 705 (2013) (internal quotation marks omitted). If a federal court finds that there is no longer a live case or controversy at any point of litigation, that court loses the power to adjudicate and must dismiss. Akin to other jurisdictional requirements, mootness stems from the Constitutions limitation of the judicial power. This is, in its most basic explanation, what the well-settled doctrine of mootness commands.

As the petition for a writ of certiorari was filed, and indeed as we considered the petition, proceedings in the

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[2]By *that*, I mean the disagreement on whether JUSTICE FEELINGS (who would affirm) and I (who would dismiss) constitute a majority in this Court. Both affirming the lower court's judgment and dismissing the appeal share a common result: they let the lower court's judgment remain. I aver that this is correct and that JUSTICE FEELINGS and I constitute a majority. At a minimum, it would produce a plurality where we agree on the same result with different reasonings. I conclude this for the following reason: Typically, Appellees or Respondents defending from an appeal of a favorable lower court judgment may request the appellate court to either affirm the judgment below or, in the alternative, dismiss the appeal (and vice versa). See, *e.g.*, Motion to Dismiss or Affirm, *Castañon* v. *United States*, 595 U.S. ___ (2021); see also *Igartúa* v. *Obama*, 842 F.3d 149, 154 (1st Cir. 2016) ("[T]he government asked the Court to *dismiss* the appeal . . . . In the alternative, the government asked the Court to *affirm* the judgment . . . ." (internal quotation marks omitted)). They do so because both share a common result where the judgment below remains; either affirming or dismissing is favorable to the Appellee or Respondent. This is analogous to the present situation. No matter which disposition prevails (affirming the judgment or dismissing the appeal), both would be favorable to the Respondent. Since JUSTICE FEELINGS and I would rule in favor of the Respondent, albeit in different ways and with different reasonings, we constitute a majority in this Court.

District Court continued and jtistheman4 was eventually appointed counsel. Our initial determination would have been that we do not have jurisdiction to hear the appeal because of mootness. But our view of the record in the District Court was limited. Our peephole into the case consisted solely of the certiorari petition and the lower court's Memorandum Opinion and Order. At the outset of granting certiorari and receiving the lower court's record, we should have at least become weary of our jurisdiction and consider whether to dismiss as moot; after we let the proper briefing schedule ensue, we should have done so now.

Even until this day, jtistheman4 retains counsel. In fact, present developments in the record suggest that jtistheman4 may even have co-counsel assist him. It is therefore impossible for the Court to grant any *effectual* relief to him if we were to rule in his favor. See *Chafin* v. *Chafin*, 568 U.S. 165, 172 (2013) (emphasis added) (explaining that a case becomes moot when it is impossible to grant any effectual relief).

* * *

Because jtistheman4 has and retains the assistance of counsel, and because nothing he asks us to do would afford any effectual relief, his appeal is moot. The Constitution warrants dismissal when a case is moot, and I would therefore dismiss. However, the Court is equally divided on the outcome, and so a *per curiam* decision affirming the judgment below must follow.