2018 WL 565674 (U.S.) (Appellate Petition, Motion and Filing)
Supreme Court of the United States.

Gerard A. SHERIDAN, Petitioner,
v.
Manuel de Jesus Ortega MELENDRES, on behalf of himself and all other similarly situated, et al., Respondents.

No. 17-1041.
January 22, 2018.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petition for Writ of Certiorari

Dennis I. Wilenchik, John D. Wilenchik, Brock D. Kaminski, Wilenchik & Bartness, P.C., 2810 N. Third St., Phoenix, AZ 85004, (602) 606-2810, jackw@wb-law.com, for petitioner Gerard A. Sheridan.

***i** QUESTIONS PRESENTED

Gerard A. Sheridan is the former Chief Deputy of the Maricopa County Sheriff's Office, who was found in civil contempt of a district court's preliminary injunction order after he voluntarily agreed the order had been violated, although not intentionally. The district court's subsequent actions related to the contempt, however, have directly and continuously damaged Sheridan. In an attempt to vacate those actions and clear his name, Sheridan challenged the district court's findings of contempt on appeal. After filing his appeal, however, Sheridan retired from the MCSO, which the Ninth Circuit found dispositive with respect to Article III standing. As such, the Ninth Circuit erroneously dismissed the appeal as moot and found Sheridan liable for Plaintiffs' attorneys' fees on appeal pursuant to 42 U.S.C. § 1988(b).

The questions presented are:

1. Whether direct, unretracted government action that continuously harms a litigant's reputation constitutes a sufficient injury-in-fact so as to afford a court Article III jurisdiction and save a case from mootness.

2. Whether 42 U.S.C. § 1988(b) creates fee liability on appeal against a non-party civil contemnor who faced no personal liability on the merits of plaintiffs' underlying federal civil rights claims, but whose appeal of the district court's finding of civil contempt against him is dismissed for lack of standing.

***II PARTIES**

Petitioner Gerard A. Sheridan was a Nonparty-Appellant in the court of appeals below.

Respondents Manuel De Jesus Ortega Melendres, Jessica Quitugua Rodriguez, David Rodriguez, Velia Meraz, Manuel Nieto, Jr., on behalf of themselves and all others similarly situated, and Somos America were Plaintiffs-Appellees in the court of appeals below.

Respondent United States was an Intervenor-Plaintiff-Appellee in the court of appeals below.

Sheriff Joseph M. Arpaio of the Maricopa County Sheriff's Office was a Defendant in the court of appeals below, but his successor-in-office, Paul Penzone, withdrew from the appeal and was dismissed on April 26, 2017. As the Sheriff was sued only in his official capacity, his withdrawal from the appeal was a withdrawal of the Maricopa County Sheriff's Office, which was a defendant in the district court proceedings, from the appeal as well.

Lieutenant Joseph Sousa of the Maricopa County Sheriff's Office was a Nonparty-Appellant in the court of appeals below, but withdrew from the appeal and was dismissed on May 25, 2017.

***iii** TABLE OF CONTENTS

***vi** TABLE OF AUTHORITIES

Cases

*1 PETITION FOR A WRIT OF CERTIORARI

Petitioner Gerard A. Sheridan ("Sheridan") respectfully petitions for a writ of certiorari to review the orders of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Order of the court of appeals dismissing Sheridan's appeal as moot is unreported but is available at 2017 WL 4315029. App., 6a. The Order of the court of appeals denying Sheridan's petition for panel rehearing is unreported but can be found at Docket Entry ("Dkt.") 65 for Case Number 16-16663 in the Ninth Circuit Court of Appeals. App., 10a. The Order of the court of appeals finding Sheridan liable for Plaintiffs' attorneys' fees on appeal has been selected for publication, but has not yet been published. That Order is available at 2018 WL 280907. App., 1a.

JURISDICTION

The Order of the court of appeals dismissing Sheridan's appeal as moot was entered on August 3, 2017 and Sheridan's petition for panel rehearing of that order was denied on October 24, 2017. The Order of the court of appeals finding Sheridan liable for Plaintiffs' attorneys' fees on appeal pursuant to 42 U.S.C. § 1988 was entered on January 4, 2017. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

*2 CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2 of the U.S. Constitution provides that "[t]he judicial power shall extend to all Cases, in Law and Equity, arising under … the Laws of the United States …."

The pertinent provisions of 42 U.S.C. § 1988 are reproduced at App. 12a.

INTRODUCTION

In 2007, the plaintiff class of Latino individuals ("Plaintiffs" or the "plaintiff class") brought an action against the Maricopa County Sheriff's Office ("MCSO") and Sheriff Joseph M. Arpaio ("Sheriff Arpaio") (collectively, "Defendants"), alleging that MCSO's officers and Sheriff Arpaio violated the Fourth and Fourteenth Amendments by profiling the plaintiff class and subjecting them to illegal stops while enforcing immigration laws (hereinafter, the "*Melendres* Litigation"). After a trial on the merits, the district court issued permanent injunctive relief against the MCSO intended to protect the civil rights Plaintiffs' claimed were violated.

Subsequently, the district court found Sheridan, and others, in civil contempt with respect to matters unrelated to the permanent injunctive relief. Sheridan appealed the district court's findings that held him in contempt, and the court's subsequent relief related to its contempt findings. Importantly, no aspects of Sheridan's appeal challenged any of the district court's orders or findings that related to the ***3** merits of Plaintiffs' claims in the *Melendres* Litigation.

Sheridan retired from MCSO after filing his appeal and the Ninth Circuit dismissed that appeal as moot due to his retirement. According to the Ninth Circuit, Sheridan's reputation was an insufficient interest to afford him Article III standing that would save his case from mootness.[1] In addition, he was found liable for Plaintiffs' attorneys' fees on appeal pursuant to section 1988, even though he - *i.e.*, a non-party - was never found liable on Plaintiffs' underlying claims in the *Melendres* Litigation.

The Court should grant review in order to resolve the conflict amongst the courts of appeals on two issues of national importance. In conflict with numerous courts of appeals and departing from this Court's well-reasoned holdings, the Ninth Circuit determined that reputational harm caused by government action, by itself, cannot constitute an Article III injury that will save a case from mootness. That decision creates a dangerous rift amongst the Circuits that will, in some cases, preclude review of government action that directly injures potential litigants. Moreover, the Ninth Circuit has found Sheridan - a non-party civil contemnor that faced no liability on the merits of the Plaintiff class' underlying civil rights claims, which only sought injunctive relief - liable for attorneys' fees on appeal pursuant ***4** to 42 U.S.C. § 1988, even though his primary basis of relief was vacatur of the district court's findings that held him in contempt of court. Such a decision departs from this Court's holdings in *Kentucky v. Graham,* 473 U.S. 159 (1985), and directly conflicts with the law of the Fourth Circuit, which requires that a litigant be found liable on the merits of a claim that triggers section 1988 liability *prior to* facing fee liability under that statute.

Both of the aforementioned issues present this Court with an opportunity to mend the rift among the courts of appeals by determining the scope and intention of both Article Ill's live case or controversy requirement and section 1988's fee-shifting provision.

STATEMENT

A. Factual Background and District Court Proceedings

After Plaintiffs filed the underlying lawsuit in 2007, the district court entered a preliminary injunction on December 23, 2011, prohibiting Defendants from detaining any individual "based only on knowledge or reasonable belief, without more, that the person is unlawfully present within the United States." Doc. 494 at 40.[2]

Following a bench trial on the merits, the district court entered permanent injunctive relief on May 24, 2013, finding that the plaintiff class' Fourth and ***5** Fourteenth Amendment rights had been violated. As a result, *the MCSO only* was enjoined from, among other things, enacting policies and engaging in conduct that the court found violative of plaintiffs' rights. Doc. 579.

On February 2, 2015, the district court entered an order to show cause and set an evidentiary hearing to determine whether the MCSO, Sheriff Arpaio, and other nonparties such as Sheridan and Lieutenant Joseph Sousa ("Sousa") had violated, among other things, the December 23, 2011 preliminary injunction. Doc. 880. Both Sheriff Arpaio and Sheridan voluntarily agreed that the order had been violated, although not intentionally. After a 21-day contempt evidentiary hearing, the court issued its Contempt Findings on May 13, 2016. Doc. 1677.

In the Contempt Findings, the district court held Sheridan, Sheriff Arpaio, and others in civil contempt.[3] As to Sheridan, the court found that he failed to implement the December 23, 2011 preliminary injunction and violated the court's May 2014 oral instructions to gather evidence responsive to plaintiffs' discovery requests. Doc. 1677 at 40-43.

On July 20, 2016, the district court issued additional, permanent injunctive relief arising out of the Contempt Findings, which mandated new internal affairs procedures for the investigation and resolution of allegations of MCSO employee misconduct ***6** that came to light in the 2015 evidentiary hearings. In addition, the district court authorized an Independent Investigator to examine that misconduct and to recommend employee discipline. Amending the injunction order for the second time ("Second Amended Second Supplemental Permanent Injunction/Judgment Order", hereinafter, the "Contempt Injunction"),

the district court granted the Independent Investigator sole authority to determine whether to pursue reinvestigations or new charges against Sheridan, regardless of whether those matters arose from the Contempt Findings. Doc. 1765, at 5 ¶ 313.

B. Sheriff Arpaio's Criminal Trial and President Trump's Pardon.

On October 25, 2016, the district court then issued an Order to Show cause as to whether Sheriff Arpaio should be held in criminal contempt for willful disobedience of the December 23, 2011 preliminary injunction. The court did not issue any such order as to Sheridan. Sheriff Arpaio's trial began on June 26, 2017. On July 31, 2017, Judge Susan Bolton issued a bench verdict finding him guilty of criminal contempt of court. Prior to sentencing, President Donald Trump issued a full and unconditional Pardon to Sheriff Arpaio for his conviction and any other offenses that may arise out of the *Melendres* Litigation.

C. The Court of Appeal's Decisions.

Prior to the criminal trial, Sheriff Arpaio, Sheridan, and Sousa sought, with good cause, vacatur of the Contempt Injunction and recusal of the district ***7** court Judge and the Monitor[4] in the court of appeals. Dkt. 11.[5] According to that appeal, the Contempt Injunction's broad remedies violated the Ninth Circuit's opinion in *Melendres v. Arpaio*, 784 F.3d 1254 (9th Cir. 2015) and were thus invalid. In addition, *ex parte* communications between the district court Judge and Monitor required recusal of both. After the Opening Brief was submitted in the court of appeals, Sheriff Arpaio lost his bid for re-election in November 2016, and Sheridan and Sousa retired from MCSO. Sousa and Sheriff Arpaio's successor, Paul Penzone, voluntarily withdrew from the appeal.

After Sheriff Penzone and Sousa were dismissed, Sheridan was the only appellant remaining. Plaintiffs and the United States (as Intervenor-Plaintiff-Appellee) moved to dismiss the appeal for lack of standing principally because his retirement somehow rendered the appeal moot. In response, Sheridan asserted that "[w]hile the injunctive relief and the civil contempt might not oblige [him] to do or act in any certain way[ ], the [Contempt Injunction] reopened or initiated new internal affairs investigations into [his] past acts, which [have] damaged his professional reputation" and thus grants him standing to proceed. Dkt. 50, at 8-9.

On August 3, 2017, the Ninth Circuit dismissed Sheridan's appeal as "moot". App., 6a.

> ***8** Sheridan, a non-party civil contemnor, has incurred no personal liability, financial or otherwise, as a result of the district court's judgment or finding of civil contempt. Although he was originally bound by the judgment insofar as it imposed obligations on the [MCSO], where he was then employed, his subsequent retirement mooted that interest. Accordingly, he now lacks the necessary interest to maintain this appeal.

App., 7a. The Ninth Circuit erroneously concluded that "[t]he asserted harm to Sheridan's reputation is insufficient to save his appeal from mootness." App., 8a.

Sheridan filed a petition for panel rehearing on September 18, 2017, Dkt. 58,[6] which was denied on October 24, 2017. App., 11a.

On November 11, 2017, Plaintiffs filed an Application for Attorneys' Fees on Appeal, seeking recovery of fees incurred in Sheridan's appeal pursuant to 42 U.S.C. § 1988. Dkt. 67. Plaintiffs disingenuously claimed that they were the "successful party", for purposes of that statute, because the dismissal of ***9** Sheridan's appeal "protected the results Plaintiffs-Appellees worked to achieve in the district court, and ensured continued protections for the Plaintiff class." Dkt. 67 at 12. Plaintiffs also claimed that they were entitled to "prevailing party" status on appeal as a result of prosecuting the contempt proceedings in

the district court. *Id.*

In response, Sheridan alerted the Ninth Circuit to this Court's holding in *Graham,* 473 U.S. at 168, wherein the Court held that "[s]ection 1988 simply does not create fee liability where merits liability is nonexistent." Dkt. 68 at 5. Sheridan made clear that he faced no merits liability in the district court, as he was not a party to Plaintiffs' injunctive relief action against MCSO and Sheriff Arpaio, and thus could not be held personally liable for Plaintiffs' attorneys' fees under section 1988.

The Ninth Circuit, however, misinterpreted Sheridan's argument; *i.e.*, that because he was not found in any way to be liable on the merits of Plaintiffs' claims, he was shielded from section 1988 liability pursuant to this Court's holding in *Graham.*

> Sheridan further argues that *Kentucky v. Graham* … stands for the proposition that a non-party may not be liable for a fee award under section 1988. We do not read *Graham* so broadly. *Graham* held that a government entity could not be vicariously liable for a fee award when plaintiffs prevailed in a lawsuit against its employees in their personal capacities.

***10** App., 3a - 4a.

Failing to apply this Court's holding in *Graham* - and directly conflicting with the Fourth Circuit's holding in *Johnson v. City of Aiken,* 278 F.3d 333, 338 (4th Cir. 2002) - the Ninth Circuit granted, in part, Plaintiffs' Application for Attorneys' Fees on Appeal.[7]

REASONS FOR GRANTING THE PETITION

A. The Court Should Grant Review In Order To Settle The Dispute Between The Circuits Concerning The Effect Of A Reputational Injury On The Article III Analysis.

Article III requires that "an actual controversy … be extant at all stages of review". *Campbell-Ewald Co. v. Gomez,* 136 S.Ct. 663, 669 (2016) (citations omitted). "If an intervening circumstance deprives the plaintiff of a 'personal stake in the outcome of the lawsuit,' at any point during litigation, the action can no longer proceed and must be dismissed as moot." *Id.* (citations omitted).

The decision below - that Sheridan's retirement from MCSO somehow mooted his appeal (based on the fact the he did not incur damages in the *Melen* ***11** *dres* Litigation) and that any reputational injury[8] arising from the Contempt Findings/Injunction does not afford him a sufficient interest in the case - directly conflicts with the sound decisions of the D.C. Circuit, whose reasoning has been applied and adopted by numerous other courts of appeals.

According to the D.C. Circuit, "when injury to reputation is alleged as a secondary effect of an otherwise moot action, [it is] required that 'some tangible, concrete effect' remain, susceptible to judicial correction." *McBryde v. Comm. to Review Circuit Council Conduct & Disability Orders of Judicial Conference of U.S.,* 264 F.3d 52, 57 (D.C. Cir. 2001) (citation omitted). In other words, direct reputational injury that occurs as a result of a challenged government action will satisfy Article III's standing requirements and afford a federal court jurisdiction to hear a case that would otherwise be considered moot. *Foretich v. United States,* 351 F.3d 1198, 1214 (D.C. Cir. 2003) (citing *McBryde,* 264 F.3d at 57).

The D.C. Circuit's holdings, and many of the courts of appeals who have adopted the *McBryde/Foretich* rule, is derived from this Court's long-standing precedent that reputational injury may constitute an Article III injury-in-fact. *See McBryde,* 264 F.3d at 57 (citing *Meese v. Keene,* 481 U.S. 465 (1987)); *Foretich,* 351 F.3d at 67 (citing *id.* at 473-77). For example, federal courts have the ***12** power to hear habeas corpus petitions that are otherwise moot so long as the petitioner's injury is more than a mere "collateral consequence" of the conviction. *Spencer v. Kemna,* 523 U.S. 1 (1998); *see id.* at 21 (STEVENS, J., dissenting) (the interest in vindicating one's reputation can constitute a sufficient interest to overcome mootness).

The Ninth Circuit, however, has held that *Spencer* absolutely precludes a litigant from asserting a reputational injury in order to avoid mootness. *Jackson v. Cal. Dep't of Mental Health,* 399 F.3d 1069, 1075 (9th Cir. 2005). That line of reasoning, which resulted in the Ninth Circuit dismissing Sheridan's appeal as moot, not only conflicts with the law of other Circuits, but departs form this Court's holdings concerning the effects of reputational injuries in the Article III context. *See Keene,* 481 U.S. 465; *Spencer,* 523 U.S. 1.

The need to resolve this conflict, though, is especially acute because the Ninth Circuit absolutely bars litigants from challenging government action that has directly and fundamentally harmed their reputation, if the other aspects of that challenge are moot. As that same injury produces a different result in other Circuits, the Ninth Circuit's approach runs afoul of the federal interest in ensuring that all citizens have access to the courts. *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g,* 476 U.S. 877, 888 (1986) ("The federal interest in ensuring that all citizens have access to the courts is obviously a weighty one.").

***13 1. The Courts Of Appeals Are Divided Over Whether A Reputational Injury Is Sufficient For Purposes Of Article III To Present A Live Controversy And Avoid Mootness.**

The division among the courts of appeals regarding whether a reputational injury is sufficient to establish an Article III injury and preserve a case from mootness leaves no doubt that if this case had been heard in the D.C., Second, Fourth, or Fifth Circuits, then Sheridan's appeal would have been decided on the merits as opposed to dismissed as moot.

The decision of the court below, in conjunction with its opinion in *Jackson,* precludes a litigant in the Ninth Circuit from successfully asserting that a direct, reputational injury arising from a challenged government action is sufficient to save a case from mootness.

Even though the relevant question in *Jackson* was whether a habeas petitioner had standing to challenge his confinement under California's Sexually Violent Predator Act ("SVPA"), the court discussed the consequences of that confinement upon the petitioner's reputation and whether the petitioner therefore had an interest sufficient keep his case from becoming moot. 399 F.3d at 1070, 1075. According to the court, though, "[t]he Supreme Court has consistently held that reputation is not a sufficient interest to avoid mootness." *Id.* ("We have obviously not regarded [an interest in vindicating reputation] as sufficient [to avoid mootness] in the past - even when the finding was not that of a parole board, but ***14** the much more solemn condemnation of a full-dress criminal conviction") (quoting *Spencer,* 523 U.S. at 16 n.8). Thus, the court held that *any* reputational injury suffered by the petitioner "would not be enough to keep the case from becoming moot", much less constitute an injury-in-fact affording him "standing to challenge the state court's jurisdiction in order to vindicate his reputation." 399 F.3d at 1075.

Relying on *Jackson,* the Ninth Circuit stated that "[t]he asserted harm to Sheridan's reputation is insufficient to save his appeal from mootness." App., 8a.

The court found insignificant that a district judge had found Sheridan in civil contempt, that he was under investigation by AZ POST as a result of the district court's actions, and that the finding of contempt severely limited his ability to procure future employment. *Id.* Thus in the Ninth Circuit, even where a litigant asserts direct, ongoing, and continuous reputational harm resulting from government action (here, a court's finding of civil contempt and subsequent, related actions), such harm will never sufficiently present a "live controversy" that will save a case from mootness. This is a dangerous interpretation of this Court's Article III jurisprudence, and directly conflicts with the law of numerous Circuits.

In the D.C. Circuit, a reputational injury derived from a challenged government action may present a live controversy affording a federal court jurisdiction to hear an otherwise moot case.

In *McBryde,* the D.C. Circuit held that "when injury to reputation is alleged as a secondary effect of ***15** an otherwise moot action, [it is] required that 'some tangible, concrete effect' remain, susceptible to judicial correction." 264 F.3d at 57 (citation omitted). In that case, the Judicial Council of the Fifth Circuit (the "Counsel") sanctioned a federal judge by imposing upon him one and three-year suspensions, in addition to a public reprimand. *Id.* at 55.

By the time the court heard Judge McBryde's appeal of those sanctions, however, the one and three-year suspensions had expired and could not be redressed. *Id.* at 55. According to the court, any reputational injury suffered by Judge McBryde *as a result of the imposition of the suspensions* was "too vague and unsubstantiated to preserve [his] case from mootness." *Id.* at 57 (citation omitted). "Insofar as the one-year and three year suspensions may have continuing reputational effects [upon Judge McBryde], they are not enough. The legally relevant injury is only the incremental effect of a record of the suspensions…." *Id.* Thus, the court dismissed as moot his specific challenges to those suspensions.

The public reprimand, though, caused distinct and separate reputational injuries that kept alive Judge McBryde's request that the court invalidate the reprimand. *Id.* at 56-57. The mere fact that the reprimand was "part of the historical record" saved that portion of his appeal from mootness. *Id.* at 57. The court recognized that if Judge McBryde were to prevail in seeking invalidation of the reprimand, then his reputation would no longer be subject to the continuous stigmatization arising from what was then a legally-valid reprimand. *Id.* ("injury to reputation can nonetheless suffice for purposes of constitutional standing").

***16** Expanding upon its holding in *McBryde,* the D.C. Circuit in *Foretich* held that "where reputational injury derives directly from an unexpired and unretracted government action, that injury satisfies the requirements of Article III standing to challenge that action." 351 F.3d at 1213.

In *Foretich,* Congress passed a bill of attainder (the "Elizabeth Morgan Act") that effectively extinguished the plaintiff's visitation rights of his daughter - that he previously enjoyed via a court order - and "restrict[ed] his ability to seek future custody or visitation orders." *Id.* at 1210. By the time the court of appeals heard the case, though, the daughter had already reached the age of majority. *Id.* Insofar as the plaintiff sought invalidation of the Elizabeth Morgan Act to seek future custody or visitation rights, his case was moot. *Id.*

However, the plaintiff asserted, and the court of appeals agreed, that his reputational injury - *i.e.,* "that the Elizabeth Morgan Act embodies a congressional determination that he engaged in criminal acts of child abuse from which his daughter needed protection" - satisfied Article III's cognizability and re dress ability requirements. *Id.* at 1211.

The court of appeals properly recognized that "where harm to reputation arises as a byproduct of government action, the reputational injury, without more, will not satisfy Article III standing *when that government action itself no longer presents an ongoing controversy.*" *Id.* at 1212 (emphasis in original). However, the plaintiff's claim of reputational harm presented a live and ongoing controversy because a "declaratory judgment that the [Act was] unlawful ***17** will consequently provide meaningful relief" by erasing Congress' determination that he was a child abuser. *Id.* at 1213. In other words, so long as the Act remained valid, the plaintiff was continuously being labeled a child abuser by Congress and its invalidation would successfully redress his reputational injury by eradicating that determination. *Id.*

Rejecting the notion that the plaintiff's case in its entirety was moot, the court of appeals expressly held that a direct reputational injury to a litigant's reputation arising from government action "satisfies the requirements of Article III standing to challenge that action." *Id.* at 1213.

Thus, the D.C. Circuit in *McBryde/Foretich* established that reputational injury alone can save a case from mootness when a litigant suffers cognizable harm from a continuing, unretracted government action. That framework has been adopted and applied by numerous courts of appeals.[9]

The Second Circuit, in *Gully v. Nat'l Credit Union Admin. Bd.,* 341 F.3d 155 (2d Cir. 2003), recognized that "[s]everal circuits have found reputational injury sufficient to establish 'injury in fact' ". *Id.* at 162 (quoting *McBryde,* 264 F.3d at 57). In *Gully,* the National Credit Union Administrative Board (a federal agency) found that the plaintiff had "engaged in unsafe and unsound practices [in her role as the ***18** manager of a federally-insured credit union] and that she breached her fiduciary duty". 341 F.3d at 158. The Board, however, did not take any further action against the plaintiff because, among other things, she had already resigned from her managerial position. *Id.* at 159. In deciding whether the plaintiff even had standing to redress a purely reputational injury, the Second Circuit held that the Board's findings of misconduct were an effective "death knell" for her career and that "[a] finding [in her favor] … would remove the stain on [her] professional record." 341 F.3d at 162 (citing *Keene,* 481 U.S. at 477). In so concluding, the Second Circuit cited *McBryde* for the proposition that a "blight" on

one's reputation is the kind of injury-in-fact contemplated by Article III so long as that injury is a direct and serious effect of the challenged action. 341 F.3d at 162 (citing *McBryde,* 264 F.3d at 57).

Similarly, the Fourth Circuit has applied *McBryde* in determining the sufficiency of a plaintiff's asserted reputational harm for purposes of Article III. *Lebron v. Rumsfeld,* 670 F.3d 540, 562 (4th Cir. 2012). In *Lebron,* the plaintiff claimed, among other things, "that he suffers a continuing injury from the stigma of being labeled an enemy combatant" as a result of his conviction on federal terrorism charges and that such reputational harm constituted an Article III injury. *Id.* at 562.[10]

***19** Applying the D.C. Circuit's reasoning from *McBryde,* the court found the plaintiff's reputational injury "inadequate to satisfy the 'injury in fact' requirement." *Id.* ("[t]he legally relevant injury is only the incremental effect of a record of the suspensions … over and above that caused by the … explicit condemnations.") (quoting *McBryde,* 264 F.3d at 57). In addition to being labeled an enemy combatant, the plaintiff had also been convicted "of three federal crimes of terrorism based on proof that he was a member of al Qaeda". 670 F.3d at 562. In light of the heinous underlying facts of his conviction, which itself was not appealable for unrelated reasons, the court could not "imagine what 'incremental' harm it does to [plaintiff's] reputation to add the label of 'enemy combatant' to the fact of his convictions and the conduct that led to them." *Id.*

In *Danos v. Jones,* 652 F.3d 577 (5th Cir. 2011), the Fifth Circuit adopted the *McBryde/Foretich* rule in affirming the district court's grant of the defendant's motion to dismiss for lack of standing. There, the plaintiff - a secretary to then-district Judge G. Thomas Porteous, Jr. - challenged on numerous grounds[11] the Judicial Council of the Fifth Circuit's public reprimand of Judge Porteous and its suspension of his authority to employ staff during his then-impending impeachment hearing. *Id.* at 580. After he ***20** was removed from office by the Senate - effectively rendering the case moot - the plaintiff attempted to assert an ongoing Article III controversy by stating that the Council's reprimand of Judge Porteous harmed her reputation. *Id.* at 584. Adopting the reasoning in *Foretich,* the Fifth Circuit disposed of that argument because "any such harm is 'merely the secondary effect of an injury that is otherwise moot.' " *Id.* (quoting *Foretich,* 351 F.3d at 1212).

Thus, it is clear that if Sheridan's appeal were brought in the D.C., Second, Fourth, Fifth, or even the Sixth or Tenth Circuits, his reputational injury, at minimum, would have at least been subjected to a more exacting analysis and, likely, found to have constituted an acceptable injury-in-fact susceptible to judicial correction.[12]

***21** Sheridan's reputational harm is well-documented in the record, and is not in any way disputed. As a direct result of the Contempt Findings/Injunction, he lost his teaching position at SCC, an AZ POST investigation was opened up against him and directly threatened his ability to procure future employment as a law enforcement officer, and he was denied the ability to even interview for a Chief of Police position. Concordantly, any court following the *McBryde/Foretich* framework would likely conclude (especially in the age of the internet) that those devastating consequences to Sheridan's reputation constitute a sufficient injury-in-fact affording jurisdiction to hear an appeal of the finding of contempt.

2. The Ninth Circuit's Determination That Mootness Cannot Be Overcome By Reputational Harm Not Only Conflicts From The Reasoned Approach Adopted By Its Sister Circuits, But Departs With This Court's Well-Established Holdings.

This Court's decision in *Meese v. Keene,* 481 U.S. 465 (1987) was a crucial component and guidepost in the development of the *McBryde/Foretich* framework. In *Keene,*

> the Court found that a politician and film distributor had standing to challenge a government agency's stigmatizing ***22** as 'political propaganda' foreign films that he wished to exhibit. The Court rested not only on affidavits indicating that this branding would affect his chances for reelection, but also on the impact on his reputation generally[.]

McBryde, 264 F.3d at 57 (internal citations omitted) (discussing *Keene,* 481 U.S. at 473-74); *see also Foretich,* 351 F.3d at 1211 (citing *id.* at 473-77).

The D.C. Circuit relied on *Keene* in determining that a reputational injury could constitute an Article III injury-in-fact, *McBryde,* 264 F.3d at 57 (citing 481 U.S. at 473-74), and that a reputational injury can be redressed by invalidating the government action from which such harm derives. *Foretich,* 351 F.3d at 1215 (citing 481 U.S. at 477). Similarly, the Second and Tenth Circuits also contemplated the application of *Keene* in adopting the *McBryde/Foretich* framework. *Gully,* 341 F.3d at 162 (reputational harm can constitute injury-in-fact) (citing *Keene,* 481 U.S. at 472-77); *Robertson,* 564 Fed.Appx. at 934 (same) (citing *id.*).

To support its distinction between the kind of direct reputational harm that could support standing and the incremental harm that could not support standing, the *McBryde* court relied upon *Spencer's* suggestion "that where an effect on reputation is a *collateral* consequence of a challenged sanction, it is insufficient to support standing, or presumably, to escape mootness." 264 F.3d at 57(citing *Spencer,* 523 U.S. at 16-17 n.8) (emphasis in original). Therein, the court bolstered its decision to reject incremental reputational harm as grounds for standing by comparing ***23** such harm to the kind of mere, 'collateral consequences' that habeas corpus petitioners are prohibited from asserting as Article III injuries…." 264 F.3d at 57 (citing *id.*).

In *Jackson,* though, the Ninth Circuit interpreted *Spencer* much more narrowly and stated that this "Court has consistently held that reputation is not a sufficient interest to avoid mootness." 399 F.3d at 1075 (citing *Spencer,* 523 U.S. at 16-17 n.8).

Thus, this Court's decision in *Spencer* has spawned two entirely different approaches to analyzing an asserted reputational injury in the context of Article III. Such a rift guarantees that federal courts will possess jurisdiction to hear claims of reputational injury in some Circuits, but courts in other Circuits will be stripped of jurisdiction in similar cases.

In fact, Justice Ginsburg, in her dissent in *Spokeo v. Robins,* 136 S.Ct. 1540 (2016), has tacitly approved the notion that reputational injury alone can elevate a litigant's asserted reputational injury above the threshold imposed by Article III. *Id.* at 1556 (GINSBURG, J., dissenting). Indeed, this Court's extensive discussion of Article III standing in *Spokeo* recognized that intangible harm could in fact elevate bare procedural violations of federal law, which by themselves were insufficient injuries under Article III, above the threshold injury-in-fact requirement so long as that intangible harm was both concrete and particularized to the plaintiff. Although the Court remanded the case so that the Ninth Circuit could correctly analyze both the concreteness *and* particularity aspects of the plaintiff's asserted injury, Justice Ginsburg's dissent found that remand was ***24** unnecessary because the plaintiff's asserted injury to his employment prospects caused actual, concrete harm sufficient to confer standing. *Id.*

There is little doubt that Justice Ginsburg's statements concerning the kind of reputational injury alleged by the plaintiff in *Spokeo* are consistent with this Court's holdings in *Keene,* and the *McBryde/Foretich* framework adopted by numerous Circuits. In contrast, the Ninth Circuit's approach encourages forum shopping when a plaintiff seeks to challenge government action, but where other aspects of his case may preclude him from asserting a valid injury-in-fact. Indeed, the Ninth Circuit's rejection of reputational harm as an injury-in-fact restricts access to the courts and discourages litigants with concrete and cognizable reputational injuries from challenging governmental action that imposes direct reputational harm, but is otherwise moot.

3. This Case Cleanly Presents An Opportunity For The Court To Resolve The Dispute Concerning The Effect Of A Reputational Injury On The Article III Analysis.

This case presents an appropriate vehicle for the Court to define the scope of Article III and whether a litigant may assert a reputational injury as a facet of his case that will save it from mootness.

In the court below, Sheridan asserted numerous, direct effects of the Contempt Injunction on his personal and professional life that, in many other Circuits, would at least trigger an increased level of analysis as to whether those injuries presented a ***25** live case or controversy susceptible to judicial correction (as opposed to the Ninth Circuit's conclusory rejection of the sufficiency of those injuries). In fact, Sheridan alleged that he lost his teaching position as a result of the district court's

Contempt Finding/Injunction, and that he was precluded from even applying for a Chief of Police position in another county. Moreover, the Contempt Injunction authorized continuous and unlimited investigation by the Independent Investigator into Sheridan's conduct as an MCSO employee, regardless of whether that conduct related in any way to Plaintiffs' underlying claims in the *Melendres* Litigation. Such exposure to investigation imminently threatens Sheridan's AZ POST certification, the revocation of which would constitute a death sentence for his career in law enforcement. Indeed, Sheridan alleged that an AZ POST investigation had been opened up against him as a result of the district court's actions.

These injuries surely are of the kind and quality that under the *McBryde/Foretich* analysis would trigger Article III jurisdiction. The injury to Sheridan's reputation is not a mere incremental effect of the district court's actions that he challenges on appeal, but are rather lasting consequences that can be remedied by the invalidation of the Contempt Findings. Rendering those findings null and void would not only clear his name, but eliminate any continuing stigma that arises from a judicial finding of contempt against the former Chief Deputy of the largest County Sheriff's Office in the State of Arizona.[13]

***26** The Court should grant review.

B. The Court Should Grant Review In Order To Settle The Dispute Between The Circuits Concerning The Limits Of Fee Liability Under 42 U.S.C. § 1988.

The Court should also grant review in order to settle the conflict between the Ninth and Fourth Circuits regarding whether a litigant is required to be liable on the merits for a plaintiff's underlying civil rights claims before he can be found liable for attorneys' fees pursuant to 42 U.S.C. § 1988(b).

This Court's unanimous decision in *Graham,* until now, has been crystal clear: "[s]ection 1988 simply does not create fee liability where merits liability is non-existent." 473 U.S. at 168; *see also Indep. Fed'n of Flight Attendants v. Zipes,* 491 U.S. 754, 762 (1989) ("Our cases have emphasized the crucial connection between liability for violation of federal law and liability for attorney's fees under federal fee-shifting statutes.") (citing *Id.*). In *Graham,* several plaintiffs brought civil rights claims against law enforcement officers in their individual capacities. They also named as a defendant the Commonwealth of Kentucky, from which the plaintiffs sought only attorneys' fees in the event that they prevailed on the merits. *See Graham,* 473 U.S. at 161-62. The Commonwealth was dismissed on Eleventh Amendment grounds, but when the case settled in favor of ***27** the plaintiffs, the plaintiffs sought an attorneys' fee award against the Commonwealth. *See id.* at 162. The district court awarded fees, and the Sixth Circuit affirmed. *See id.* at 163. This Court reversed, reasoning that § 1988 authorized payment of fees only by "the party legally responsible for relief on the merits." *Id.* at 164. The Court added that even if immunity is the basis for a party's avoidance of liability, that party cannot be liable under § 1988 for payment of fees. *See id.* at 165.

Recognizing that the nexus between fee liability and merits liability is an absolute requirement when assessing fees under section 1988, the Fourth Circuit specifically precludes the recovery of such fees against a defendant who faces no liability on the merits of claims that trigger section 1988. *Johnson v. City of Aiken,* 278 F.3d 333, 338 (4th Cir. 2002) ("*Graham* teaches us that [the defendant]'s status as a nonparty on the state law assault claim protects him from § 1988 liability arising from that claim."). Thus in the Fourth Circuit, section 1988 fee liability may only be assessed against a defendant who is first found to be liable on the merits of a plaintiffs' claim or claims that trigger section 1988 in the first place. *See id.*

The Ninth Circuit, on the other hand, places no such restriction on the ambit of section 1988. Bucking the clear requirements of *Graham,* the Ninth Circuit has effectively eliminated the boundaries of section 1988 fee liability and allows for attorneys' fees to be assessed against any litigant in a civil rights case, regardless of whether that litigant could ever be found liable on the merits of plaintiffs' underlying claims.

***28** Thus, the Ninth Circuit's elimination of the limits imposed by this Court on that fee-shifting statute ensures that non-parties will face the substantial risk of having to pay for plaintiffs' attorneys' fees merely for attempting to protect their own rights in federal civil rights cases that trigger section 1988. Worse, those same non-parties who are found in contempt by a court may be effectively precluded from challenging that finding on appeal and clearing their name due to these exorbitant risks.

1. The Courts of Appeals are Divided Over the Scope of 42 U.S.C. § 1988(b) Fee Liability.

A rift now exists in the Circuits regarding the circumstances under which section 1988(b) fee liability may be imposed.

The court below held that a non-party can be liable under section 1988(b) for attorneys' fees even when he was not a named defendant in the underlying civil rights action and faced no liability on the merits of Plaintiffs' claims. Without even considering this Court's clear mandate that section 1988 fee liability is predicated upon merits liability, the Ninth Circuit held Sheridan personally liable for Plaintiffs' attorneys' fees on appeal solely because "he actively inserted himself into the litigation by appealing the contempt finding in the hope of clearing his name." App., 4a. According to the court, a section 1988 award for fees incurred *on appeal* against a non-party are justified because "non-party contemnors may be held liable for attorneys' fees in other contexts." Citing to ***29** *Portland Feminist Women's Health Ctr. v. Advocates for Life, Inc.,* 877 F.2d 787, 789-90 (9th Cir. 1989) - which did not apply section 1988, but rather held a non-party civil contemnor liable for plaintiffs' attorneys' fees as *a sanction of the contempt itself* - the Ninth Circuit found "no reason to treat an award of fees under section 1988 any differently." App., 4a. Thus without any basis to do so, the Ninth Circuit has limited *Graham* to standing only for the proposition that governmental entities dismissed on immunity grounds cannot face fee liability in civil rights suits against the entities' employees.

The Seventh Circuit has interpreted *Graham* as allowing for the recovery of attorneys' fees against a non-party, so long as that non-party has *fully* participated in the underlying litigation of the merits of the plaintiffs' civil rights claims, regardless of whether that party will face any merits liability. In *Charles v. Daley,* 846 F.2d 1057 (7th Cir. 1988), the court held that private intervening parties who could not have been found liable for violations of the plaintiffs' constitutional rights were nonetheless liable for fees where they had been full participants with the governmental defendants in the litigation and, "for all practical purposes were their alter ego". *Id.* at 1064-65. The court distinguished *Graham* principally on the basis that Kentucky was immune from fees as the result of the operation of the Eleventh Amendment and had been dismissed from the law suit on that basis, and ultimately ruled that *Graham* did not prohibit the imposition of section 1988 fee liability against the interveners. *Id.* at 1066.

In the Fourth Circuit, however, a litigant cannot be held liable under section 1988 unless he is liable on the merits of the claims for which plaintiffs are seeking their fees. *Johnson,* 278 F.3d at 338. In other ***30** words, a plaintiff may only recover attorneys' fees from a *defendant* under section 1988, and only where that defendant has been found liable on the merits of the specific claims for which the plaintiff seeks fees. *See id.*

In *Johnson,* plaintiffs alleged various federal civil rights violations against defendant City of Aiken, and defendant law enforcement officer Clark. 278 F.3d at 335. In addition, plaintiffs asserted a state law assault claim against the City only. *Id.* After a trial on the merits in which the jury awarded damages to the Plaintiffs for the various federal claims against all defendants and against the City for the state law assault claim, an appeal to the Fourth Circuit disposed of various claims on qualified immunity grounds. *Id.* at 336. "[A]fter appeal only two awards remained: the state law assault claim award … against the City and the federal vehicle entry claim award of [70] cents … against Clark." *Id.*

On remand, the district court awarded plaintiffs "$98,828.28 in attorneys' fees and costs against Clark" pursuant to section 1988. *Id.* at 336. The district court based "Clark's fee liability on [the plaintiffs'] success against the City on the state law assault claim" and determined that "he was responsible for paying the full [section 1988] fee award." *Id.* at 337.

Recognizing that "§ 1988 authorize[s] payment of fees only by 'the party legally responsible for relief on the merits' ", *Id.* at 338 (quoting *Graham,* 472 U.S. at 164), the Fourth Circuit held that "Clark's status as a nonparty on the state law assault claim protects him from § 1988 liability arising from that claim." ***31** 278 F.3d at 338. Accordingly, the Fourth Circuit vacated the fee award because "the only appropriate award under § 1988 was none at all". *Id.* at 339; *see also In re Crescent City Estates, LLC,* 588 F.3d 822, 827 (4th Cir. 2009) ("because attorneys are nonparties not liable on the merits, they are generally outside the ambit of fee-shifting statutes.") (citing *id.* at 338).

As such, had Sheridan challenged the contempt finding in the Fourth Circuit, he would in no way face liability under section 1988 regardless of the ultimate disposition of his appeal. He faced no liability on the merits of Plaintiffs' injunctive relief claims and any claim by Plaintiffs for an award of attorneys' fees against him would have been summarily ignored by any court in that Circuit per the express holding in *Johnson.*

In any event, there is no harmony among the Circuits with regards to the definitive scope of fee liability under section 1988. In the Fourth Circuit, fee liability is predicated upon a party's merits liability. In the Seventh Circuit, a litigant must "actively participate" in the underlying litigation as a prerequisite to being liable for a prevailing party's fees. In the Ninth Circuit, however, no clear limitations on section 1988 exist. Defendants and nonparties alike face fee liability in civil rights cases, with no regard to this Court's holdings in *Graham.* The Court should grant review in order to mend this conflict and halt the aggressive and unfounded expansion of the scope of 42 U.S.C. § 1988 in the Ninth Circuit.

***32 2. This Case Cleanly Presents The Court With An Opportunity To Protect Non-Party, Government Employees From The Burden Of Fee Shifting Statutes And Eliminate Forum Shopping In Civil Rights Cases.**

This case presents the Court with a proper vehicle to comment on the ambit of section 1988 fee liability and conclusively resolve the dispute between the Circuits on whether *Graham* precludes a federal court from imposing such liability upon a non-party to a civil rights action that otherwise triggers section 1988(b). There are no factual disputes that could interfere with this Court's ability to decide on the issues. Sheridan is a non-party civil contemnor who never faced any liability whatsoever on Plaintiffs' injunctive relief action in the district court. On appeal of the district court's finding of him in contempt, the Ninth Circuit dismissed his appeal as moot. Pursuant to 42 U.S.C. § 1988(b), the Ninth Circuit then awarded Plaintiffs their attorneys' fees incurred for work related to their motion to dismiss. As such, there is nothing to impede this Court's ability decide this issue.

Moreover, this Court has stated that section 1988 is not a "relief fund for lawyers." *Hensley v. Eckerhart,* 461 U.S. 424, 446 (1983) (citation omitted). Ignoring *Henley,* though, the Ninth Circuit has transformed the fee-shifting statute into just that; a mechanism through which plaintiffs may recover attorneys' fees from a virtually unlimited pool of litigants in federal civil rights cases, without any regard to whether that litigant has a liability connection to the merits of the underlying claims that ***33** trigger section 1988(b). There is simply no basis in that statute, or this Court's holdings, to impose section 1988 liability against a non-party for fees that were incurred in that non-party's appeal of a court's contempt findings.

The imposition of fee liability upon non-party civil contemnors is especially troubling in light of this Court's express requirement that "[t]he touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute." *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.,* 489 U.S. 782, 792-93 (1989). Thus, by expanding section 1988 fee liability to non-party civil contemnors such as Sheridan - who seek only to vacate the district court's contempt findings, and where such vacatur would have absolutely no effect on any kind of substantive relief previously afforded to Plaintiffs - the Ninth Circuit has ignored *Garland Independent School District's* express mandate.

Alarmingly, the Ninth Circuit's interpretation of *Graham* has dangerous implications for employees of public entities that are sued for federal civil rights claims. In effect, where plaintiffs seek injunctive relief against a public entity under those civil rights stat-utes that trigger section 1988 liability, any employee found in contempt of violating an injunction will face substantial risk of incurring fee liability merely for challenging that finding on appeal, even when that employee had no involvement in the underlying litigation and would face no liability on the merits of plaintiffs' claims.

***34** Such a result will produce a vast chilling effect on those seeking to clear their name in the courts of appeals who claim to have been wrongly held in contempt, but otherwise cannot afford the substantial risk of fee liability. Moreover, civil rights plaintiffs will be incentivized to bring suits in forums adopting the Ninth Circuit's approach to section 1988 fee liability because of the vast scope of section 1988 and increased chances of fee recovery.

Indeed, the Ninth Circuit has imposed such liability upon Sheridan, a life-long civil servant who has been found liable for Plaintiffs' attorneys' fees incurred in opposing his challenge to the district court's Contempt Injunction, but whose appeal has been dismissed as moot. Even though the Appellate Commissioner has yet to decide on the total amount of the fee award against Sheridan, Plaintiffs have requested a staggering $63,460.92 in fees to be assessed against him solely for attempting to clear his name.

Therefore, this case cleanly presents the Court with an opportunity to impose limits upon the ambit of liability litigants face under section 1988, provide non-parties the ability to safely and efficiently challenge court orders that affect only their own

rights, and eliminate forum-shopping in civil rights cases that trigger section 1988's fee-shifting provisions.

***

By departing from this Court's teachings concerning the effect of a reputational injury on the Article III analysis, and by directly conflicting with the D.C. Circuit's well-reasoned approach in *McBryde/Foretich,* the Ninth Circuit has limited ***35** access to the federal courts where such access would otherwise be enjoyed by litigants in numerous other Circuits. In addition, the Ninth Circuit has effectively eliminated any barriers to fee liability previously imposed by 42 U.S.C. § 1988(b) by finding a non-party civil contemnor personally liable for attorneys' fees incurred on an appeal of a district court's contempt findings. That decision directly conflicts with this Court's holding in *Graham* and the Fourth Circuit's holding in *Johnson,* the resolution of which will create uniformity amongst the Circuits in the application of section 1988.

CONCLUSION

The petition for a writ of certiorari should be granted.

Footnotes

[1] Sheridan in no way is conceding that his appeal is moot merely because he retired from MCSO. In fact, a brief on the merits will more fully explain that the harm inflicted upon him by the district court renders his retirement effectively irrelevant to the Article III analysis.

[2] "Doc." refers to documents filed in the *Melendres* Litigation, Case 2:07-cv-02513-GMS, by docket number.

[3] The district court declined to use its contempt power to coerce compliance with the preliminary injunction because Defendants were no longer violating the injunction. The court ordered defendants to pay compensation to the victims, but did not hold Sheridan jointly and severally liable for any of those costs.

[4] The Monitor was authorized by the district court to, among other things, consider disciplinary outcomes for MCSO employees that violated departmental policy.

[5] "Dkt." refers to documents filed in the Ninth Circuit, Case 16-16663, by docket number.

[6] In a signed affidavit submitted with his Petition for Panel Rehearing, Sheridan asserted that as a result of the finding of contempt, among other things, he lost his teaching position at Scottsdale Community College ("SCC"), that he was denied the opportunity to be considered for the position of Chief of Police of the Glendale, Arizona Police Department, and that the Arizona Peace Officer Standards and Training Board ("AZ POST") had begun investigating his conduct at MCSO related to the contemp. App., 13a - 18a.

[7] The Ninth Circuit referred the matter to the Appellate Commissioner to determine the reasonableness of Plaintiffs'

requested fees.

8 The Ninth Circuit did not find that Sheridan's reputation had not been harmed, but rather that any reputational injury, by itself and in any form, was insufficient to save his appeal from mootness.

9 *See Parsons v. Dept. of Justice,* 801 F.3d 701, 711 (6th Cir. 2015) ("Reputational injury … is sufficient to establish an injury in fact.") (citing *Foretich,* 351 F.3d at 1213); *Robertson v. Colvin,* 564 Fed.Appx. 931, 934 (10th Cir. 2014) (plaintiff's reputational injury was "too abstract and speculative" to save her case from mootness) (citing *Foretich,* 351 F.3d at 1212).

10 The plaintiff had asserted various claims arising out of his conviction on federal terrorism charges, all of which the district court, and the court of appeals, found to be meritless. On appeal, the plaintiff, in part, challenged the district court's finding that "he lacked standing to seek an order enjoining the government from designating him as an enemy combatant in the future." 670 F.3d at 560.

11 Seeking a declaratory judgment that the Council's action was *ultra vires*, the plaintiff's case was found to be moot because her claim for monetary relief was barred by sovereign immunity and the Senate's removal of Judge Porteous from office precluded the plaintiff from seeking injunctive relief. *Id.* at 584.

12 Numerous district courts have also directly applied the *McBryde/Foretich* reasoning and held that a plaintiff has standing to assert a reputational injury that keeps alive a moot case. *Hong Kong Entm't (Overseas) Investments Ltd. v. United States Citizenship & Immigration Servs.,* No. 1:16-CV-00009, 2017 WL 4369475, at *3 (D. N. Mar. I. Oct. 1, 2017) (rejecting plaintiff's reputational injury as "too vague and unsubstantiated to preserve a case from mootness.") (quoting *McBryde,* 264 F.3d at 57); *Pearl River Union Free Sch. Dist. v. Duncan,* 56 F. Supp. 3d 339, 365 (S.D.N.Y. 2014) (reputational harm derived from defendant's "unexpired and unretracted" determination that plaintiff knowingly failed to investigate incident of racial harassment qualified as injury-in-fact) (quoting *Foretich,* 351 F.3d at 1213); *Silicon Econ., Inc. v. Fin. Accounting Found.,* No. CIV.A. 11-163, 2011 WL 3742182, at *5 (D. Del. Aug. 18, 2011) ("Injury to reputation, including commercial reputation, may constitute a cognizable injury-in-fact for Article III standing.") (citing *Foretich,* 351 F.3d at 1211); *Kendall v. Russell,* No. CIV. 2007-126, 2008 WL 219762, at *4 (D.V.I. Jan. 16, 2008), *judgment entered,* No. CIV. 2007-126, 2008 WL 501164 (D.V.I. Feb. 16, 2008), *and aff'd,* 572 F.3d 126 (3d Cir. 2009) (finding that the "direct and potentially prejudicial impact [that the Virgin Island Commission on Judicial Proceedings' hearings] could have on [plaintiff's] reputation and career, [made for] a live controversy as contemplated by Article III") (citing *McBryde,* 264 F.3d at 57).

13 "Indeed, experience has taught that the dignity accorded an individual may depend as much on reputation as on actual merit." *Mosely v. City of Chicago,* 252 F.R.D. 421, 433 (N.D. Ill.), *order vacated in part on reconsideration sub nom. Mosley v. City of Chicago,* 252 F.R.D. 445 (N.D. Ill. 2008) (citing Posner, Cardozo: A Study In Reputation (1993)).

End of Document