Syllabus

SUPREME COURT OF THE UNITED STATES

Syllabus

ALEX J. CABOT, PETITIONER *v.* UNITED STATES DISTRICT COURT, EX REL FALSUR

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

No. 1-09. Argued January 4, 2022—Decided January 10, 2022

The Respondent messaged the Petitioner, now a former Chief Justice of the Supreme Court of the United States of America, regarding the suspension of a District Judge and stated that he would inform the judge to disobey the Court's suspension of said judge. Petitioner responded by stating that he would refer the obstruction to Congress if actioned. On the same day—the 30th of December of 2021, the Petitioner sent a message in a case chat that is now archived in the United States District Court Discord server. District Judge Falsur, the Respondent, who was not the presiding judge nor has ever been party to that case in any capacity held and issued the Petitioner in contempt of the court for 'destruction of court records'. The Respondent affirmed the citation that was issued under 18 U.S.C. § 401 under the "[m]isbehavior of any its officers in their official transactions." Notice of appeal was given on the 30th of December of 2021. The Court motioned and granted a summary disposition in favor of the Petitioner.

Held: Petitioner is entitled to judicial immunity. Pp. 15-16.

(a) The Petitioner was unlawfully held in contempt of court under 18 U.S.C. § 401. Pp. 3-10.
(b) Due process must be given to those who are facing a contempt of court citation through an *ex parte* medium prior to the citation's issuance. Pp. 13-15.
(c) Judges who are presiding over a case are responsible for maintaining decorum, upholding the law, and the stability of the courtroom.

Therefore, it is only the presiding judge—not any judge—who may issue a contempt of court citation. Pp. 16-17.

SUPREME COURT OF THE UNITED STATES

No. 1-09

ALEX J. CABOT, PETITIONER *v.* UNITED STATES DISTRICT COURT, EX REL FALSUR

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

[January 10, 2022]

CHIEF JUSTICE THOMAS delivered the opinion of the Court.

I.

"Criminal contempt is a crime in the ordinary sense," *Bloom* v. *Illinois*, 391 U.S. 194, 201 (1968). To which, "criminal penalties may *not* be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings," *Hicks* v. *Feiock*, 485 U.S. 624, 632 (1988) (emphasis added). In *Mines Workers* v. *Bagwell*, 512 U.S. 821, 826 (1994), the Court upheld the rights of a defendant further reinforced in *In re Bradley*, 318 U.S. 50 (1943) regarding double jeopardy circumstances. Petitioner refers to a case prior to *Bradley* where the defendant's rights "to be notified of charges, to have the assistance of counsel, to a summary process, and to present a defense." *Cooke* v. *United States*, 267 U.S. 517, 537 (1925). Even further, more rights would include "privilege against

self-incrimination [and the] right to proof beyond a reasonable doubt." *Ibid*, citing *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 444 (1911).

The Petitioner finds that these rights apply to those under criminal proceedings, and such include being under criminal contempt. *Mine Workers*, *supra*.

In *Gompers*, *supra*, at 441, the Court determined that "for a criminal contempt, the sentence is punitive, to vindicate the authority of the court." *Gompers*, however, recognized that the stated purposes of a contempt citation are alone insufficient to be determinative." *Id*, at 443. The Court found that "when a court imposes fines and punishments…it is not only vindicating its legal authority to enter the initial court order, but it is [also] seeking to give effect to the law's purpose of modifying the contemnor's behavior to conform to the terms required in the order." *Hicks*, *supra*, at 635. The *Hicks* Court further held that conclusions regarding the nature of a contempt citation are drawn "from an examination of the character of the relief itself," *id*., at 636—not only the "subjective intent [of] . . . its Courts." *Id*., at 635.

And thus, contempt citations are criminal and punitive if they are imposed retroactively for a "completed act of disobedience." *Gompers*, *supra*, at 443. Given such, the *Gompers* Court held that a twelve-month contempt sentence on an individual "for violating an antiboycott injunction was criminal." *Mine Workers*, *supra*, at 829 (citing *Gompers*, *supra*). Following this, it raises the question of if the lower court satisfied necessary prongs and prerequisites to issue a contempt citation.

United States law defines the situation in which contempt of court is appropriate:

> "A court of the United States shall have the power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—
>
> (1) Misbehavior of any person in [the court's] presence or so near thereto as to obstruct the administration of justice;
>
> (2) Misbehavior of any its officers in their official transactions;
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command." Title 18, Section 401 of the United States Code.

Further, in section 402, statute defines what constitutes crimes within the sphere of contempt citations as any "person, corporation, or association willfully disobeying any lawful writ, process, order, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, if the act or thing so done be such of character as to constitute also a criminal offense under any statute of the United States."

When looking at these several elements and resources complied, it is simply ludicrous that the lower court decided to ignore the very real implications and

error when issuing the contempt of court citation onto the Petitioner.

When interpreting statutory law, we "begin with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself." *CPSC et al.* v. *GTE Sylvania, Inc.*, *et al.*, 447 U.S. 102, 108 (1980). And upon doing so, Government finds that the plain meaning of the statute can be ambiguous—that certain words or phrases may only become evident when placed into context. Thus, to decide if the language is plain enough, we read the words "in their context and with a view to their place in their overall statutory scheme." *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000). Simply put, "[a]bsent a clearly expressed legislative intention to the contrary, [the] language must ordinarily be regarded as conclusive." *CPSC et al.*, 447 U.S., at 108. Section 401 of Title 18 is clear enough in that it supplies the basis power of contempt to the United States courts; the language is plain enough.

Another relevant statute to further explore and discuss is Title 18, Section 3691 of the United States Code. Petitioner finds this language to be plain enough, satisfying the first half of the standard set out in *CPSC*, 447 U.S. and *FDA*, 529 U.S.. Thus, we move into the placement of the statute in context with the actions we consider today and review them appropriately.

Section 3691 is simple enough; it states that actions—for which individuals are placed under contempt of court—not criminal under Acts of Congress

on their own do not necessitate the involvement of a jury in sentencing. The Court has held this before, as well. In *Bloom*, 391 U.S., the Court started that "direct contempts also cannot be punished with serious criminal penalties absent the full protections of a criminal jury trial." *Mine Workers*, 512 U.S., at 833 (citing *Bloom*, 391 U.S., at 210). When combining this with section 3691, we see two intergral prongs that must be satisfied: (1) do the person's actions which satisfy contempt fall under violation of an Act of Congress, and (2) was the punishment applied serious enough to require the full protections of a jury as outlined in *Bloom*, 491 U.S., and did it follow proper procedure?

To the first, it is a clear "no." The act of interfering with a case is not criminal in its nature; furthermore, we must remember that the distinction between civil and criminal contempt rests on the reason for its application—not the type of action warranting the retaliation. See, *e.g.*, *Gompers*, 221 U.S., at 443; see also *Miller* v. *Miller*, 375 S.C. 443, 652 S. E. 2d 754 (Ct. App. 2007). Thus, we move onto the second prong of the test: whether the punishment was done so appropriately in accordance with the law.

Government argues that the punishment applied was not serious enough to require a jury protection was not done so appropriately. Given that in *Ex parte Terry*, 128 U.S. 289, 290 (1888), it was decided that "it is within the discretion of the court either to at once make an order commitment founded on its own knowledge of the facts or to postpone action until the offender can be arrested on process, brought back

into its presence, and given an opportunity to make formal defense against the charge of contempt, and any abuse of that discretion is, at most, an irregularity or error not affecting the jurisdiction of the court.").

Criminal contempt presents a unique difficulty to judicial review, given the complications that arise. Because contempt power, uniquely, is "'liable to abuse,'" *Mine Workers* v. *Bagwell*, 512 U.S. 821 (1994) (quoting *Bloom* v. *Illinois*, 391 U.S. 194, 202 (1968)), the Court's jurisprudence in the area of contempt has "attempted to balance the competing concerns of necessity and potential arbitrariness." *Id.*, at 832; see, *e.g.*, *Young* v. *United States ex rel. Vuitton et Fils*, 481 U.S. 787, 820-821 (1987) (Scalia, J., concurring in judgment) (judicial contempt power is one of "self-defense," limited to punishing those who "interfere with the orderly conduct of [court] business or disobey orders necessary to the conduct of that business"). The Court has found that, at the pinnacle of necessary contempt adjudication, is when unfavorable conduct threatens a court's "immediate ability to conduct its proceedings." *Ibid.* Upon which, the Court has also held that summary procedure is required and proper when doing so; it "maintain[s] order in the courtroom." *Codispoti* v. *Pennsylvania*, 418 U.S. 506, 513 (1974).

Having found that the contempt power of courts is liable to abuse, the Court has declared that normal requirements summary contempt "includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business,

where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority' before the public." *In re Oliver*, 333 U.S. 257, 275 (1948), quoting *Cooke*, 267 U.S., at 536.

To curb this possible abuse, Petitioner stresses the importance of "confining summary contempt orders to misconduct occurring in court." *Pounders*, 521 U.S., at 988. Simply put, where it is misconduct that warrants the contempt citation, summary vindication is justified. See *In re Green*, 369 U.S. 689, 692 (1962) (relying on due process cases); *Harris* v. *United States*, 382 U.S. 162, 164 (1965) (defining difference between ordinary and summary contempt under Fed. Rule Crim. Proc. 42). Indeed, the failure to comply with a court order itself "constitute[s] an affront to the court, and when that kind of refusal disrupts and frustrates . . . summary contempt must be available to vindicate the authority of the court." *United States* v. *Wilson*, 421 U.S. 309, 316 (1975). Even the dissent in *Wilson* admitted contempt convictions "would have been warranted if the witnesses had engaged in 'insolent tactics.'" *Pounders*, 521 U.S., at 989 (citing *Wilson*, 421 U.S. at 326 (Brennan J., dissenting) (quoting *Harris*, 382 U.S., at 165)). To be noted, Petitioner suggests ". . .think 'summary' as used in [Rule 42] does not refer to the timing of the action with reference to the offense, but refers to a procedure which dispenses with the formality, delay, and digression that would result from the issuance of

process . . . and all that goes with a conventional court trial." *Codispoti* v. *Pennsylvania*, 418 U.S. 506 (1974).

It is undoubtedly the right of a defendant to an impartial decision maker. See *Caperton* v. *A. T. Massey Coal Co., Inc.,* 556 U.S. 868, 872 (2009) ((quoting *Withrow* v. *Larkin*, 421 U.S. 35, 47 (1975)) (internal quotation marks omitted). The Court's jurisprudence recognized, in most cases, the impossibilities of proving a negative. See *Smith* v. *United States*, 568 U.S. ___ (2013) (slip op., at 7) (citing 9 J. Wigmore, Evidence section 2486, p. 288 (J. Chadbourn rev. 1981)). That, in essence, is the reason why a defendant is entitled to a "presumption of innocence" in all criminal cases. *Coffin* v. *United States*, 156 U.S. 432, 453 (1895). Similarly, it is not unreasonable to expect a party accusing a judge of bias to show cause for that allegation; after all, they are making the "affirmative allegation." 568 U.S., at __ (slip op., at 7).

II.

Government would like to remind the Court that we are evaluating a handful of statutes in this matter. We are looking at Title 18, Section 401 as well as 402 of the United States Code. Moreover, we have Rule 42 of the Federal Rules of Criminal Procedure. To which, there is Title 18, Section 3691. To preface, we are reviewing the doctrines of plain meaning, *in pari materia*, *noscitur a soclis*, rule of lenity, and consistent usage.

Title 18, Section 401 of the United States Code refers to this notion of "officers," see "[m]isbehavior of any of its officers in their official transactions." To

better define *who* is an officer, Government refers to Title 28, Chapter 49, which consists of Sections 751 to 756. However, 756 would not be party to the definition of defining the officers of the district court. Therefore, with the application of *another* statute to clarify the initial statute of Title 18, Section 401, Government looks and applies *in pari materia*.

This interpretation finds additional support in the common canon of statutory construction that similar statutes are to be construed similarly, in *pari materia*). "[U]nder the *in pari materia* canon, statutes addressing the same subject matter generally should be read 'as if they were one law.'") (citations omitted); *Cook* v. *Wikler*, 320 F.3d 431, 434 (3d Cir. 2003) (applying the *in pari materia* canon). See, *e.g.*, *Wachovia Bank* v. *Schmidt*, 546 U.S. 303, 126 S.Ct. 941, 943-44, 163 L.Ed.2d 797 (2006).

This clarification allows the statute to be more plainly read. In *Caminetti* v. *United States*, 242 U.S. 470 (1917), the Court reasoned that "[i]t is elementary that the meaning of a statute must, in first instance, be sought in the language in which the act is framed, and if that is plain… the sole function of the courts is to enforce it according to its terms." To which, *Caminetti* Court warned that "the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Ibid*. This is where the lower court erred when they decided to interpret Title 18, Section 401 *sua sponte*. In the case that the statute appears to be ambiguous, we are to "[use] *noscitur a sociis* and *ejusdem generis* to resolve ambiguity." See *Yates* v. *United States*, 574

U.S. ___ (2015) (Kagan, J., dissenting). It should be further noted that in the case of an ambiguous, criminal statute, the Supreme Court instructed the lower courts to resolve the ambiguity in favor of the defendant. See *McNally* v. *United States*, 483 U.S. 350 (1987); see, *e.g.*, *Muscarello* v. *United States*, 524 U.S. 125 (1998) (declining to apply the rule of lenity); *Evans* v. *United States*, 504 U.S. 255 (1992) (Thomas, J., dissenting); *Scarborough* v. *United States*, 431 U.S. 563 (1977) (Stewart, J., dissenting); see *United States* v. *Santos*, 553 U.S. 507 (2008).

Moreover, "[I]dentical words used in different parts of the same act are intended to have the same meaning." *Helvering* v. *Stockholms Enskilda Bank*, 293 U.S. 84, 87, 55 S.Ct. 50, 79 L.Ed. 211 (1934). Generally, there is a presumption of consistent usage. *Sullivan* v. *Stroop*, 496 U.S. 478, 484, 110 S.Ct. 2499, 110 L.Ed.2d 438 (1990) ("[The] normal rule of statutory construction [is] that identical words used in different parts of the same act are intended to have the same meaning." (citations omitted)); *United States DOL* v. *N.C. Growers Ass'n*, 377 F.3d 345, 352 n. 8 (4th Cir. 2004) (same). Under the canon of consistent usage, the Court reads this word as having one consistent meaning. *United States* v. *Castleman*, 134 S. Ct. 1405, 1417 (2014) ("[T]he presumption of consistent usage [is] the rule of thumb that a term generally means the same thing each time it is used [and] most commonly applie[s] to terms appearing in the same enactment.") (Scalia, J., concurring); see also *Abbott* v. *Essex Co.*, 59 U.S. 202, 216 (1855). "[S]ince under the canon of consistent usage [the

word] cannot properly mean one thing as applied to two of the objects in a series ... but something else as applied to the other object in the same series" (footnote omitted)); *IBP, Inc.* v. *Alvarez*, 546 U.S. 21, 34, 126 S.Ct. 514, 163 L.Ed.2d 288 (2005) (relying in part on "the normal rule of statutory interpretation that identical words used in different parts of the same statute are generally presumed to have the same meaning" to sustain the conclusion that a term in one subsection of a statute had the same meaning as it did in the preceding subsection). *Ibid*.

III.

As Justice Frankfurter put it, "[t]o suppose that 'due process of law' meant one thing in the Fifth Amendment and another in the Fourteenth Amendment is too frivolous to require elaborate rejection." See *Malinski* v. *New York*, 324 U.S. 401, 415 (1945) (Frankfurter, J., concurring). Therefore, it is plausible for the Court to treat the Fifth and the Fourteenth Amendments together and equally in regard to due process. Granted, the Court did say in 1855 that "[t]he words, 'due process of law', were undoubtedly intended to convey the same meaning as the words, 'by the law of the land', in Magna Carta." See *Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 59 U.S. 272 (1855). Moreover, in the 1884 case of *Hurtado* v. *California*, 110 U.S. 516 (1884), the Supreme Court said:

> Due process of law in the [Fourteenth Amendment] refers to the law of the land in each state which derives its authority from the inherent

> and reserved powers of the state, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and the greatest security for which resides in the right of the people to make their own laws, and alter them at their pleasure.

Petitioner refers to a lack of due process. In this particular case, we are referring to procedural due process—not substantive due process. Two of the essential constructs of due process, which are the vein of nearly every other application of the clause, are to guarantee to all the ordinary processes of law and proper notice of what the law is. See *Johnson* v. *United States*, 576 U.S. ___ (2015) (slip op., at 3). Procedural due process is the more present of the two established branches—with the other being substantive due process. It serves to provide the basic guarantees of procedure, or to return to the language of the constructs: the ordinary processes of law. *Ibid*. Among its many guarantees, one has the rights to, first, an impartial judge. In that, "recusal [must be required] where the probability of actual bias on the part of the judge or decision-maker [sic] is too high to be constitutionally tolerable." *Caperton* v. *A. T. Massey Coal Co., Inc.,* 556 U.S. 868 (2009) (quoting *Withrow* v. *Larkin*, 421 U.S. 35, 47 1975)). Second, there is a right to discovery. See *Brady* v. *Maryland*, 373 U.S. 83 (1963). These guarantees shape the course of a trial and litigation. They come in varying degrees of complexity, but all *ultimately* are for fulfilling the mandate of the ordinary process construct.

Each guarantee of procedural due process is linked to that construct in some way or the other.

Under *Hagar* v. *Reclamation Dist.*, 111 U.S. 701 (1884), a defendant is entitled to an "opportunity to be heard." *Id.*, at 708. This finding applies equally to criminal, as it does to civil, proceedings. This was, also, a finding of procedural due process—but one which contributes to a more formative whole.

IV.

Judicial immunity is granted to those in the judicial branch. *Stump* v. *Sparkman*, 435 U.S. 349 (1978) ruled that the judge could not be sued, because the decision was made in the course of his duties. In that regard, it was irrelevant that the judge's decision may have been contrary to law and morally rephrensible. Absolute judicial immunity applies when judges act in their judicial capacity. See *Imbler* v. *Pachtman*, 424 U.S. 409, 418 (1976). A judge enjoys this immunity when they exceed their jurisdiction, but not when they act without any jurisdiction. See *Stump* v. *Sparkman*, 435 U.S. at 356-57. Determining whether someone is acting in a judicial capacity and thus deserves absolute immunity requires using a functional test; that is, one must determine whether the person is acting functionally similarly to a judge. See *Butz* v. *Economou*, 438 U.S. 478 (1978). Considering that the Petitioner was acting in their capacity as the Chief Justice of the United States, we feel that they are entitled to judicial immunity for the foregoing reasons. To which, the Respondent was in no capacity to place a contempt citation on the

Petitioner; the Respondent was not the presiding judge. Therefore, the Respondent had no authority to maintain a sense of decorum or prevent any misbehavior within the courtroom. Title 18, Section 401, according to the Government's interpretation, applies to the presiding judges. To which, this is further enforced under Rule 42 of the Federal Rules of Criminal procedure.

V.

The Court decided to consider this case as a precedential case under Title 48, Section 1983 United States Code. As the Court has already determined, Petitioner was not entitled to his due process rights under the Fourteenth Amendment of the United States Constitution. With this logic in mind, Title 48, Section 1983 says, "[e]very person who, under color of any statute…subjects…any citizen…to the deprivation of any rights…secured by the Constitution and laws, shall [result in]…other proper proceeding for redress." Given that the Petitioner found redress through a *certiorari* petition, this would be considered as "[an]other proper proceeding for redress." There is a contingency to this statute though. "[E]xcept that in any action brought against a judicial officer for an act...taken in such officer's judicial capacity." This clause does come with an exception of its own. "[U]nless a declaratory decree was violated or declaratory relief was unavailable." To which, a declaratory decree is a ruling of the court on a question posed by a lawsuit. Under this code, a declaratory decree might by a ruling from the court that certain

conduct by a government actor (*e.g.*, a federal judge) would violate constitutional or civil rights. In this matter, the declaratory decree that is now considered to be unlawful as well as unconstitutional certainly fits this criteria. Subsequently, it does not help the Respondent's case as the issuer of the contempt of court citation came from a judge—only that it was the wrong judge. While it may have been a judge, it was certainly not the presiding judge. That is a key distinction to remember here—something the Court is mindful of in this matter.

It is so ordered.