

IN THE
Supreme Court of the United States

PETER K. NAVARRO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 2 U.S.C. § 192, which makes it a crime to “willfully make[] default” on a congressional subpoena, requires the Government to prove the defendant knew that his conduct was unlawful.

PARTIES TO THE PROCEEDING

Petitioner is Peter K. Navarro. Respondent is the United States of America.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Navarro*, No. 24-3006 (D.C. Cir.) (opinion issued July 21, 2026; reh’g en banc denied Aug. 28, 2026).
- *United States v. Navarro*, No. 1:22-cr-200 (D.D.C.) (judgment entered Feb. 11, 2024; resentencing denied May 20, 2024).

Petitioner also previously sought bail pending appeal from this Court:

- *Navarro v. United States*, No. 23A843 (U.S.) (denied Mar. 18, 2024).

There are no additional proceedings in any court that are directly related to this case within the meaning of this Court’s Rule 14.1(b)(iii).

TABLE OF CONTENTS

Question Presented	i
Parties to the Proceeding	ii
Statement of Related Proceedings.....	ii
Table of Authorities.....	v
Petition for a Writ of Certiorari.....	1
Opinions Below.....	1
Jurisdiction.....	1
Statutory Provision Involved.....	1
Introduction.....	2
Statement of the Case	4
A. Factual Background	4
B. Procedural Background.....	6
Reasons for Granting the Petition.....	8
I. The D.C. Circuit’s Interpretation of “Willfully” Was Erroneous	9
A. Basic principles of statutory construction demonstrate that “willfully” has an independent meaning in section 192.	9

i. Canons of statutory construction show that “willfully” has an independent meaning in section 192.....	10
ii. The rule of lenity resolves any ambiguity in favor of Dr. Navarro.	12
B. This Court’s decisions construing “willfully” in criminal statutes consistently require knowledge that the conduct was unlawful.	13
C. The D.C. Circuit’s contrary rule rests on cases that did not directly construe the willfulness element of section 192.....	16
II. This Case Is Worthy of Review	19
A. This case raises core separation-of-powers issues.	20
B. This case presents concerning issues that are likely to recur.	22
C. Dr. Navarro was denied the ability to present a defense.....	24
Conclusion	25

TABLE OF AUTHORITIES

Cases

<i>Bailey v. United States</i> , 516 U.S. 137 (1995)	11
<i>Bart v. United States</i> , 349 U.S. 219 (1955)	22
<i>Barenblatt v. United States</i> , 360 U.S. 109 (1959)	22
<i>Bifulco v. United States</i> , 447 U.S. 381 (1980)	12
<i>Braden v. United States</i> , 365 U.S. 431 (1961)	22
<i>Browder v. United States</i> , 312 U.S. 335 (1941)	15
<i>Bryan v. United States</i> , 524 U.S. 184 (1998) (<i>Sillasse Bryan</i>)	2, 14, 15
<i>Cheek v. United States</i> , 498 U.S. 192 (1991)	2, 15
<i>Dean v. United States</i> , 556 U.S. 568 (2009)	13
<i>DePierre v. United States</i> , 564 U.S. 70 (2011)	12

<i>Deutch v. United States</i> , 367 U.S. 456 (1961)	22
<i>Emspak v. United States</i> , 349 U.S. 190 (1955)	22
<i>Felton v. United States</i> , 96 U.S. 699 (1878)	14
<i>Flaxer v. United States</i> , 358 U.S. 147 (1958)	22
<i>Fowler v. United States</i> , 563 U.S. 668 (2011)	11
<i>Gojack v. United States</i> , 384 U.S. 702 (1966)	22
<i>Hutcheson v. United States</i> , 369 U.S. 599 (1962)	22
<i>Joint Anti-Fascist Refugee Comm. v. McGrath</i> , 341 U.S. 123 (1951)	25
<i>Licavoli v. United States</i> , 294 F.2d 207 (D.C. Cir. 1961)... 2-3, 6, 8-9, 16-17, 19, 24	
<i>McPhaul v. United States</i> , 364 U.S. 372 (1960)	18, 22
<i>Murphy v. Waterfront Comm'n of N.Y. Harbor</i> , 378 U.S. 52 (1964)	10
<i>Nielsen v. Preap</i> , 586 U.S. 392 (2019)	10

<i>Nixon v. Adm'r of Gen. Servs.</i> , 433 U.S. 425 (1977)	21
<i>Parker Drilling Mgmt. Servs. v. Newton</i> , 587 U.S. 601 (2019)	10
<i>Potter v. United States</i> , 155 U.S. 438 (1894)	11, 12, 14
<i>Quinn v. United States</i> , 349 U.S. 155 (1955)	17, 18, 19, 22
<i>Ratzlaf v. United States</i> , 510 U.S. 135 (1994)	2, 11
<i>Russell v. United States</i> , 369 U.S. 749 (1962)	22
<i>Russello v. United States</i> , 464 U.S. 16 (1983)	10
<i>Sacher v. United States</i> , 356 U.S. 576 (1958)	22
<i>Safeco Ins. Co. of Am. v. Burr</i> , 551 U.S. 47 (2007)	15-16
<i>Screws v. United States</i> , 325 U.S. 91 (1945)	14
<i>Sinclair v. United States</i> , 279 U.S. 263 (1929)	11, 13, 17, 18, 19, 23
<i>Spies v. United States</i> , 317 U.S. 492, 498 (1943)	14

<i>Spurr v. United States</i> , 174 U.S. 728 (1899)	14
<i>Trump v. Mazars USA, LLP</i> , 591 U.S. 848 (2020)	21
<i>Trump v. United States</i> , 603 U.S. 593 (2024)	3, 20
<i>United States v. Bannon</i> , 101 F.4th 16 (D.C. Cir. 2024), <i>reh'g en banc denied</i> , 2025 WL 1503223 (D.C. Cir. May 27, 2025), <i>vacated sub nom. Bannon v.</i> <i>United States</i> , 146 S. Ct. 2155 (2026)	4, 9, 11, 14, 16, 17, 19, 22-24
<i>United States v. Bishop</i> , 412 U.S. 346 (1973)	15
<i>United States v. Fleischman</i> , 339 U.S. 349 (1950)	23
<i>United States v. Gaudin</i> , 515 U.S. 506 (1995)	11
<i>United States v. Bryan</i> , 339 U.S. 323 (1950) (<i>Helen Bryan</i>)	17, 18, 23
<i>United States v. Murdock</i> , 290 U.S. 389 (1933)	10, 13, 15, 16, 18
<i>United States v. Navarro</i> , 651 F. Supp. 3d 212 (D.D.C. 2023)	1
<i>United States v. Nixon</i> , 418 U.S. 683 (1974)	3, 20, 21

<i>United States v. Rumely</i> , 345 U.S. 41 (1953)	23
<i>United States v. Santos</i> , 553 U.S. 507 (2008)	12
<i>United States v. Shabani</i> , 513 U.S. 10 (1994)	12
<i>Shular v. United States</i> , 589 U.S. 154 (2020)	12
<i>Watkins v. United States</i> , 354 U.S. 178 (1957)	17, 18, 22, 24
<i>Wilkinson v. United States</i> , 365 U.S. 399 (1961)	22
<i>Wooden v. United States</i> , 595 U.S. 360 (2022)	14, 21
<i>Yellin v. United States</i> , 374 U.S. 109 (1963)	22

Constitutional Provisions, Statutes, and Rules

Act of Jan. 24, 1857, ch. 19, § 1, 11 Stat. 155 (1867)	14
2 U.S.C. § 192 1-2, 6, 9-10, 12, 13, 15-16, 18-21, 24	
28 U.S.C. § 1254(1).....	1
Sup. Ct. R. 10(c).....	9

Sup. Ct. R. 13.1.....	1
Sup. Ct. R. 13.3.....	1

Other Authorities

A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts (2012)	10
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Hearings on S. 2170 et al. before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations, 94th Cong., 1st Sess. (1975)	21-22
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<i>Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege</i> , 8 Op. O.L.C. 101 (1984).....	23
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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Peter K. Navarro, respectfully petitions this Court for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. A-2) is reported at 182 F.4th 1005. The order of the Court of Appeals denying rehearing en banc (Pet. App. A-90) is unreported. The relevant opinion of the district court is reported at *United States v. Navarro*, 651 F. Supp. 3d 212 (D.D.C. 2023) (Pet. App. A-42).

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The D.C. Circuit entered its judgment on July 21, 2026, and denied a timely petition for rehearing en banc on August 28, 2026. Pet. App. A-90. This petition is filed within 90 days of that order. Sup. Ct. R. 13.1, 13.3.

STATUTORY PROVISION INVOLVED

2 U.S.C. § 192 states:

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress,

or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months.

INTRODUCTION

Section 192 of Title 2 criminalizes (1) “willfully” defaulting on a congressional subpoena or (2) refusing “to answer any question pertinent to the question under inquiry.” This Court has consistently held that the term “willful” in criminal statutes requires the jury to find that the defendant acted with knowledge that his conduct was unlawful. *Bryan v. United States*, 524 U.S. 184, 193–94 (1998) (*Sillasse Bryan*); *Ratzlaf v. United States*, 510 U.S. 135, 137 (1994); *Cheek v. United States*, 498 U.S. 192, 201–02 (1991). But the panel, applying *Licavoli v. United States*, 294 F.2d 207 (D.C. Cir. 1961), interpreted “willfully” in section 192 to require merely an intentional act.

Dr. Navarro was a former high-ranking Executive Branch official. He was prosecuted for willfully defaulting on a congressional subpoena but was barred from presenting his defense that he, in good faith, believed that executive privilege prohibited him from responding to the subpoena. Based on *Licavoli*, the jury was told that a good-faith belief that executive privilege excused compliance was not a defense and that a deliberate and intentional failure

to comply with the congressional demand was enough for a conviction.

However, *Licavoli*'s construction of "willfully" in section 192 conflicts with the statutory text and structure. The statute applies "willfully" to one offense and omits it from the other. Despite Congress drafting the term "willfully" beside an offense that contains no such element, *Licavoli* held that the mens rea for both offenses is the same, reducing the term to surplusage. *Licavoli* was clearly wrong in its interpretation of "willfully," but to the extent there is ambiguity, the rule of lenity would resolve it in Dr. Navarro's favor.

Giving the term its traditional meaning would restore the element Congress wrote into the default clause and require the Government to prove beyond a reasonable doubt that Dr. Navarro knew his default was unlawful. Regardless of whether Dr. Navarro would have ultimately prevailed in front of a jury, he was entitled to make this defense.

The decision below raises serious separation-of-powers concerns. There is a compelling public interest in protecting "communications between high Government officials and those who advise and assist them in the performance of their manifold duties." *Trump v. United States*, 603 U.S. 593, 612 (2024) (quoting *United States v. Nixon*, 418 U.S. 683, 703, 707 (1974)). But an Executive Branch official who cannot rely on his good-faith (but ultimately mistaken) belief that his conversations are privileged would naturally self-censor the advice he gives to the President.

The accelerating criminalization of inter-branch oversight disputes should not be ignored. *See, e.g., United States v. Bannon*, 101 F.4th 16 (D.C. Cir. 2024), *reh’g en banc denied*, 2025 WL 1503223 (D.C. Cir. May 27, 2025), *vacated sub nom. Bannon v. United States*, 146 S. Ct. 2155 (2026). Reading section 192 as it is written and giving the term “willfully” its normal construction will mitigate this baleful trend. High-ranking officials should not have to worry about going to jail for a good-faith belief that executive privilege prohibited them from complying with a congressional subpoena.

The question presented in this case recently reached this Court in *Bannon v. United States*, 146 S. Ct. 2155 (2026). The Court granted, vacated, and remanded for further consideration because of a pending motion to dismiss the indictment in the district court. That GVR did not decide what “willfully” means in section 192. This case presents a final judgment, a preserved error, and an excellent vehicle for the statutory question.

Accordingly, this Court should grant review and hold that “willfully” under section 192 requires that the defendant knew he was violating the law, the meaning this Court has given the word in other criminal cases.

STATEMENT OF THE CASE

A. Factual Background

Dr. Peter Navarro served throughout President Donald Trump’s first term as Assistant to the President and Director of the Office of Trade and

Manufacturing Policy. On February 9, 2022, the United States House of Representatives' Select Committee to Investigate the January 6th Attack on the United States Capitol issued a subpoena to Dr. Navarro. The subpoena commanded Dr. Navarro to provide certain documents to the Select Committee by February 23, 2022, and to appear for a deposition on March 2, 2022. Pet. App. A-95–A-96.

President Trump had already publicly directed Dr. Navarro to claim executive privilege in response to a prior subpoena from the House Select Subcommittee on the Coronavirus Crisis. *Id.* at A-113. When Dr. Navarro was served with the subpoena by the Select Committee just months later, he believed President Trump had invoked executive privilege, preventing him from responding.

Dr. Navarro accordingly did not produce the documents by the Select Committee's deadline or appear for a deposition. Instead, on February 27, 2022, he wrote to the Select Committee:

President Trump has invoked Executive Privilege in this matter; and it is neither my privilege to waive or Joseph Biden's privilege to waive. Accordingly, my hands are tied. Your best course of action is to directly negotiate with President Trump and his attorneys regarding any and all things related to this matter.

Id. at A-114. The Select Committee rejected that explanation and demanded that he produce documents and testify. Dr. Navarro responded that the "privilege is not [his] to waive." *Id.* at A-98.

On March 28, 2022, the Select Committee recommended to the House of Representatives that it hold Dr. Navarro in contempt. The next week, the House found Dr. Navarro in contempt and referred the matter to the U.S. Attorney for the District of Columbia for prosecution under section 192. *Id.* at A-12–A-13.

B. Procedural Background

On June 2, 2022, a grand jury indicted Dr. Navarro on two counts of contempt of Congress in violation of 2 U.S.C. § 192 for “willfully mak[ing] default” on the subpoena. Count 1 charged the failure to produce documents; Count 2 charged the failure to appear for the deposition. *Id.* at A-99–A-100. Before trial, the Government filed a motion *in limine* to prevent Dr. Navarro from presenting evidence or argument that his good-faith belief that the President’s assertion of executive privilege, and the testimonial immunity of senior presidential advisors, relieved him of any obligation to comply with the subpoena negated the willfulness element of the offense. *Id.* at A-16. Dr. Navarro opposed the motion. The district court granted it. *Id.* at A-81; 651 F. Supp. 3d at 239. It reasoned that *Licavoli v. United States* required it to find that section 192’s use of “willfully” differed from its historical use in criminal cases and thus precluded any good-faith defense. Pet. App. A-78–A-81.

On August 28, 2023, a week before trial, the district court held an evidentiary hearing on whether President Trump had invoked executive privilege as to the Select Committee’s subpoena. *Id.* at A-104. The court ruled that there had been no formal invocation of executive privilege by the President. But it observed

that: “[W]hether [the Government] think[s] the President invoked or not here, [Dr. Navarro] thought he invoked I don’t know that anybody would really dispute that Dr. Navarro thought he was supposed to invoke.” *Id.* at A-107.

At trial in September 2023, and over Dr. Navarro’s objection, the district court instructed the jury that:

It is not a defense to contempt of Congress that the defendant failed or refused to comply because of his understanding or belief of what the law required or allowed, or because of his understanding or belief that executive privilege excused him from complying. Nor is his actual assertion of executive privilege a defense to contempt of Congress. All the government is required to prove beyond a reasonable doubt is that the defendant’s failure or refusal to comply was willful.

Id. at A-111. On September 7, 2023, the jury convicted Dr. Navarro of contempt for willfully failing to provide records and willfully failing to appear for testimony. On January 25, 2024, the district court sentenced Dr. Navarro to concurrent four-month terms of incarceration on each count. *Id.* at A-16.

Dr. Navarro timely appealed to the D.C. Circuit. After the appeal had been fully briefed, the Government moved to strike its own brief, claiming it was “no longer taking the same position as the prior administration in this case.” *Id.* at A-17. The D.C. Circuit granted its motion and heard only from Dr.

Navarro. *Id.* On July 21, 2026, the D.C. Circuit panel affirmed the district court’s decision to grant the Government’s motion *in limine* and to charge the jury that a good-faith mistaken belief that executive privilege had been asserted was not a defense to the charge of willful default. Like the district court, the D.C. Circuit panel relied on *Licavoli*, explaining that “a defendant acts willfully within the meaning of section 192 when he deliberately and intentionally defaults on a subpoena, even if he subjectively and mistakenly believed his default was lawful.” *Id.* at A-38. It further supported that conclusion by relying on this Court’s opinions interpreting the second clause of section 192, which does not include a willfulness element. *Id.* at A-38–A-41.

On August 4, 2026, Dr. Navarro filed a petition for rehearing en banc, which the D.C. Circuit denied on August 28, 2026. *Id.* at A-90.

REASONS FOR GRANTING THE PETITION

Despite the statute’s text and this Court’s cases defining criminal willfulness, the courts below, bound by *Licavoli*, interpreted the word “willfully” out of section 192. That relieved the Government of proving an element of the offense, took Dr. Navarro’s defense from the jury, and raised a serious and recurring separation-of-powers problem for Executive Branch officials who now have to worry about whether a good-faith (but mistaken) belief that executive privilege prohibits compliance with a congressional subpoena will land them in jail.

This Court should grant review to correct a decision that “conflicts with relevant decisions of this

Court” and to settle an “important question of federal law.” Sup. Ct. R. 10(c); *see also United States v. Bannon*, 2025 WL 1503223, at *4 (D.C. Cir. May 27, 2025) (Rao, J., dissenting from denial of reh’g en banc) (stating that the *Licavoli* issue raised “questions of exceptional importance”).

I. THE D.C. CIRCUIT’S INTERPRETATION OF “WILLFULLY” WAS ERRONEOUS

The D.C. Circuit still reads “willfully” in section 192 as *Licavoli* did: the Government needs to show only that the defendant intentionally defaulted, irrespective of whether he thought he had a lawful reason for doing so. That reading is inconsistent with the statute’s text and structure and with this Court’s decisions interpreting “willfully” in the criminal setting. As Judge Rao explained, “knowledge of wrongdoing is a necessary element of defaulting on a congressional subpoena,” and this is reinforced by “the text and structure of section 192[.]” *Bannon*, 2025 WL 1503223, at *5 (Rao, J., dissenting).

A. Basic principles of statutory construction demonstrate that “willfully” has an independent meaning in section 192.

The courts below treated “willfully” in section 192’s default provision as requiring the same showing of mens rea as the refusal to answer questions: intentionally defaulting without regard for whether the defendant believed doing so was lawful. In so doing, the courts below effectively read “willfully” out of the statute. This construction is incorrect, but to the extent there is ambiguity, the rule of lenity resolves it in Dr. Navarro’s favor.

i. Canons of statutory construction show that “willfully” has an independent meaning in section 192.

Several principles of statutory construction apply here. First, “[w]ords are to be given the meaning that proper grammar and usage would assign them[.]” *Nielsen v. Preap*, 586 U.S. 392, 407–08 (2019) (citing A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 140 (2012)). Moreover, a word’s context within a statute can reveal its meaning, and “[w]here Congress included particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (citation modified) (citations omitted).

Read simply, section 192, through the use of the disjunctive conjunction “or,” creates two criminal offenses with different elements: “Every person who having been summoned as a witness . . . [1] *willfully makes default, or* [2] *who, having appeared, refuses to answer any question . . . shall be deemed guilty of a misdemeanor[.]*” 2 U.S.C. § 192 (emphasis added). And “in only one of [those offenses] is willfulness” an element. *United States v. Murdock*, 290 U.S. 389, 397 (1933), *overruled in part by* *Murphy v. Waterfront Comm’n of N.Y. Harbor*, 378 U.S. 52 (1964). In other words, Congress drafted an offense that must be done “willfully” beside an offense that shares no such requirement. And because “every clause and word of a statute” is given independent effect, *Parker Drilling Mgmt. Servs. v. Newton*, 587 U.S. 601, 611 (2019) (citation modified), the term “willfully” in the first

offense *must* require something different than its omission in the second offense. *See also Bannon*, 2025 WL 1503223, at *6 (Rao, J., dissenting) (“Considering the variation in mens rea requirements for the two section 192 offenses, ‘willfully’ must mean something beyond intentional or deliberate action.”).

Holding otherwise renders the term “willfully” in the first offense surplusage. This Court hesitates “to treat as surplusage statutory terms in any setting, and resistance should be heightened when the words describe an element of a criminal offense.” *Bailey v. United States*, 516 U.S. 137, 145 (1995) (citation modified) (citing *Ratzlaf*, 510 U.S. at 140–41); *accord Fowler v. United States*, 563 U.S. 668, 677 (2011). This is why, similar to here, when “[t]he word ‘willful’ [was] omitted from the description of offenses in” a later section of a statute, this Court found “[i]ts presence in the first [could not] be regarded as mere surplusage; it mean[t] something.” *Potter v. United States*, 155 U.S. 438, 446 (1894).

This Court has already held that section 192’s refusal to answer questions offense requires *only* showing that the defendant intended to perpetrate the proscribed conduct (i.e., refuse to answer questions), regardless of whether the defendant thought he was acting lawfully. *Sinclair v. United States*, 279 U.S. 263, 299 (1929), *overruled in part by United States v. Gaudin*, 515 U.S. 506, 520 (1995). If “willfully” must add something section 192’s second offense does not require, then it must require *more* than a mere showing of intentional default on the subpoena. As this Court has consistently held in construing “willfully” in other criminal statutes, it requires a showing that the defendant defaulted on the subpoena

while knowing it was unlawful to do so. *See, e.g., Potter*, 155 U.S. at 446 (“It implies . . . knowledge and a purpose to do wrong.”).

The application of this Court’s textual canons to section 192 demonstrates that the courts below erroneously cut “willfully” out of the statute.

ii. The rule of lenity resolves any ambiguity in favor of Dr. Navarro.

The rule of lenity may be invoked only if, “after consulting traditional canons of statutory construction,” the statute remains ambiguous. *United States v. Shabani*, 513 U.S. 10, 17 (1994); *accord Shular v. United States*, 589 U.S. 154, 166 (2020) (Kavanaugh, J., concurring). Section 192 is not ambiguous. Traditional tools of statutory interpretation resolve the interpretation of “willfully” in Dr. Navarro’s favor. *See supra* Section I.A.i. But if the Court finds ambiguity persists, Dr. Navarro—like any criminal defendant—should receive the benefit of the rule of lenity. “The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them.” *DePierre v. United States*, 564 U.S. 70, 88 (2011) (quoting *United States v. Santos*, 553 U.S. 507, 514 (2008)). And this applies with even greater force here, as section 192 imposes a mandatory minimum sentence. *See* 2 U.S.C. § 192 (a defendant convicted under section 192 “shall be deemed guilty of a misdemeanor, punishable by . . . imprisonment in a common jail for *not less than one month* nor more than twelve months.” (emphasis added)); *Bifulco v. United States*, 447 U.S. 381, 387 (1980) (lenity “applies not only to interpretations of the substantive ambit of criminal prohibitions, but

also to the penalties they impose.”); *see also Dean v. United States*, 556 U.S. 568, 585 (2009) (Breyer, J., dissenting) (noting that the rule of lenity has “special force in the context of mandatory minimum provisions.”).

This is particularly true given the separation-of-powers issues in this case. If an Executive Branch official may be subjected to criminal prosecution even though he mistakenly believed in good faith that executive privilege prevented him from testifying, then the statute under which he is prosecuted should clearly proscribe his conduct. Section 192 does not do so.

B. This Court’s decisions construing “willfully” in criminal statutes consistently require knowledge that the conduct was unlawful.

This Court has previously discussed the meaning of “willfully” in section 192. In *Murdock*, this Court noted that section 192 creates two different offenses: (1) defaulting on a congressional subpoena and (2) refusing to answer questions once having appeared in response to a congressional subpoena; the former requires a showing of willfulness, and the latter does not. 290 U.S. at 397. And the latter—by not requiring willfulness—does not “make a bad purpose or evil intent an element” of the offense. *Id.* *Murdock* drew that distinction to explain why *Sinclair*—which had rejected a good-faith defense to the refusal-to-answer offense—did not govern a statute that used the word “willfully.” *Id.* at 397–98. The distinction makes sense only if the offense that contains “willfully” requires a “bad purpose or evil intent,” and a bad purpose, in this

Court’s cases, means that the defendant “acted with knowledge that his conduct was unlawful.” *Sillasse Bryan*, 524 U.S. at 191–93. As Judge Rao put it, “[t]he necessary implication of *Murdock* is that section 192’s first offense requires a bad purpose.” *Bannon*, 2025 WL 1503223, at *6 (Rao, J., dissenting); *see also* *Wooden v. United States*, 595 U.S. 360, 378 (2022) (Kavanaugh, J., concurring) (noting that “with respect to federal crimes requiring ‘willfulness,’ the Court generally requires the Government to prove that the defendant was aware that his conduct was unlawful”).

The rule is almost as old as the statute. Congress enacted what is now section 192 in 1857, Act of Jan. 24, 1857, ch. 19, § 1, 11 Stat. 155. In 1878, this Court explained that “willfully,” “in the ordinary sense in which it is used in statutes, means not merely voluntarily, but with a bad purpose It is frequently understood . . . as signifying an evil intent without justifiable excuse.” *Felton v. United States*, 96 U.S. 699, 702 (1878) (citation modified). In 1894, this Court again distinguished “willful” conduct from the mere intentional violation of law: “The word ‘willful’ . . . means something. It implies on the part of the [defendant] knowledge and a purpose to do wrong.” *Potter*, 155 U.S. at 446; *accord* *Spurr v. United States*, 174 U.S. 728, 734–35 (1899).

In *Spies v. United States*, this Court stated that it “would expect willfulness . . . to include some element of evil motive and want of justification” 317 U.S. 492, 498 (1943). Likewise, in *Screws v. United States*, the Court defined willfulness to “generally mean[] an act done with a bad purpose In that event *something more is required than the doing of the act proscribed by the statute.*” 325 U.S. 91, 101 (1945)

(plurality opinion) (citation modified). And this Court has ruled that willfulness “requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty” in multiple tax cases.¹ *Cheek*, 498 U.S. at 201–02; *accord United States v. Bishop*, 412 U.S. 346, 361 (1973).

This Court has since stated the rule in general terms: willfulness is “act[ing] with the knowledge that [the] conduct *was unlawful*.”² *Sillasse Bryan*, 524 U.S. at 193–94; *accord Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57 n.9 (2007) (“When the term ‘willful’ or ‘willfully’ has been used in a criminal statute . . . it is characteristically used to require a criminal intent

¹ Following this logic, this Court drew its definition of “willfully” in criminal tax cases from *Murdock*: “The Court, in fact, has recognized that the word ‘willfully’ in these statutes generally connotes a voluntary, intentional violation of a known legal duty. It has formulated the requirement of willfulness as ‘bad faith or evil intent[.]’” *Bishop*, 412 U.S. at 360 (quoting *Murdock*, 290 U.S. at 398).

² The only arguable exception to this Court’s long line of precedent is *Browder v. United States*, 312 U.S. 335 (1941), which dealt with a statute that proscribed willfully and knowingly using any passport that was secured by a false statement. *Id.* at 336. The defendant challenged his indictment on the ground the Government could not show he knew he used a passport obtained with a false statement to enter the country. *Id.* at 342. The Court upheld his conviction, finding the evil act was already complete by securing the passport with a false statement in the first instance. *Id.* at 342. The import of this case appears to mean that the Court found the evil intent necessary to obtain the passport with a false statement in the first instance transferred to its subsequent use. Regardless, this Court has applied a more rigorous definition of “willfully” to section 192. *See Murdock*, 290 U.S. at 397.

beyond the purpose otherwise required for guilt Thus, we have consistently held that a defendant cannot harbor such criminal intent unless he ‘acted with knowledge that his conduct was unlawful.’”).

In short, *Murdock*’s discussion of section 192 and this Court’s later criminal cases point to one conclusion: “willfully” in section 192 means the defendant defaulted while knowing that doing so was unlawful.

C. The D.C. Circuit’s contrary rule rests on cases that did not directly construe the willfulness element of section 192.

The panel held that “a defendant acts willfully” under section 192 “when he deliberately and intentionally defaults on a subpoena, *even if* he subjectively and mistakenly *believed his default was lawful*.” Pet. App. A-38 (emphases added). This conflicts with the plain statutory text and this Court’s repeated rulings that a defendant only acts willfully when he “act[s] with knowledge that his conduct was unlawful.” *See supra* Section I.B.

To support its holding, the panel relied on *Licavoli* and this Court’s opinions interpreting section 192’s refusal to answer questions offense. *Licavoli* held that “[e]vil motive is not a necessary ingredient of willfulness under [the default] clause of [section 192]. A deliberate intention not to appear is sufficient.” *Licavoli*, 294 F.2d at 208. But *Licavoli*’s interpretation of willfulness “read the willfulness requirement out of the statute.” *Bannon*, 2025 WL 1503223, at *6 (Rao, J., dissenting). In support of this construction, the

D.C. Circuit—both in *Licavoli* and in this case—cited *United States v. Bryan*, 339 U.S. 323 (1950) (*Helen Bryan*); *Quinn v. United States*, 349 U.S. 155 (1955); *Sinclair v. United States*, 279 U.S. 263 (1929); and *Watkins v. United States*, 354 U.S. 178 (1957). However, none of these cases directly construe the term or support the D.C. Circuit’s definition of it.

To start, *Helen Bryan* dealt with a defendant who concocted a post-hoc justification for failing to provide records in response to a congressional subpoena. *Helen Bryan*, 339 U.S. at 333 (defendant did not raise her defense until trial—*two years* after default). There, the Court addressed whether the affirmative defense—that the congressional committee *in fact* lacked authority to issue the defendant’s subpoena—was, as a matter of law, available to the defendant. *Id.* at 327. The Court did not directly address whether the defendant still acted willfully if she mistakenly believed the subpoena was a nullity, nor did it attempt to define “willfully.”³ And “[t]here is no reason for this court to cling to an overbroad reading of *Helen Bryan* that stands in tension with the Supreme Court’s consistent understanding that ‘willfully’ in criminal statutes requires more than merely intentional or deliberate action.” *Bannon*, 2025 WL 1503223, at *6 (Rao, J., dissenting).

³ Willfulness was not at issue in *Helen Bryan* because the defendant would not have responded to the subpoena even if the committee had authority to issue it. *Helen Bryan*, 339 U.S. at 333–34 (“She does not deny, and the transcript of the hearing makes it perfectly clear, that she would not have complied with the subpoenas no matter how the Committee had been constituted at the time.”).

Even if *Helen Bryan* is read more broadly, it merely says that there is “a prima facie case of willful default” when a witness intentionally fails to comply. *Helen Bryan*, 339 U.S. at 330. But this Court has held that a section 192 defendant is still allowed to put on evidence to rebut a prima facie case. *McPhaul v. United States*, 364 U.S. 372, 379 (1960) (noting that, after the Government establishes a prima facie case of willfully failing to comply with a congressional subpoena, “[t]he burden is then shifted to the petitioner to present some evidence to explain or justify his refusal.”). And Dr. Navarro was prohibited from presenting any evidence or argument in support of his defense of good-faith reliance on executive privilege.

Quinn dealt with a defendant’s refusal to answer questions after having already appeared in response to a congressional subpoena. 349 U.S. at 156–58. *Sinclair*, too, only analyzed the second half of section 192. *Sinclair*, 279 U.S. at 299. *Watkins* likewise focused only on the refusal to answer questions. *Watkins*, 354 U.S. at 208–10. But as this Court made clear in *Murdock*, willfulness is not an element of a violation of section 192 for refusing to answer questions. *Murdock*, 290 U.S. at 397 (“Two distinct offenses are described in the disjunctive, and in only one of them is willfulness an element.”). Therefore, *Sinclair*, *Watkins*, and *Quinn* are inapposite. The panel should not have cited these cases to support its construction of the statute, which conflated the mens rea requirements between the default and refusal-to-answer-questions offenses.

The D.C. Circuit also improperly relied on *Licavoli* in another case: *United States v. Bannon*, 101 F.4th 16 (D.C. Cir. 2024), *reh’g en banc denied*, 2025 WL 1503223 (D.C. Cir. May 27, 2025), *vacated sub nom. Bannon v. United States*, 146 S. Ct. 2155 (2026). There, the D.C. Circuit, again relying on *Licavoli*, *Quinn*, *Sinclair*, and other cases to form its erroneous definition of “willfully,” denied another former advisor to the President—Stephen K. Bannon—the opportunity to present an advice-of-counsel defense to the jury during his trial on the default charge under section 192. 101 F.4th at 21–23. Members of the D.C. Circuit expressed serious concerns about this holding. Indeed, Judge Rao, joined by Judge Henderson and Judge Walker, would have granted rehearing en banc to overrule *Licavoli*.⁴ *Bannon*, 2025 WL 1503223, at *5 (Rao, J., dissenting). Judge Katsas noted that the prosecution of former Executive Branch officials for good-faith but mistaken privilege assertions “raises questions that are troubling, important, and likely to recur.” *Id.* at *1 (Katsas, J., statement respecting denial of reh’g en banc). From *Licavoli* to *Bannon* to this case, the D.C. Circuit has applied a definition of “willfully” that is inconsistent with the text of section 192 and this Court’s precedent, and it has made clear that it will continue to do so until this Court intervenes. The Court should do so.

II. THIS CASE IS WORTHY OF REVIEW

The courts below took an erroneous view of section 192, with serious implications for the separation of powers. Indeed, the D.C. Circuit’s wrong

⁴ Judge Walker joined the dissent on the *Licavoli* issue only. *Bannon*, 2025 WL 1503223, at *3 (Rao, J., dissenting).

interpretation of “willfully” exposes Executive Branch officials to conviction for a good-faith but mistaken belief that privilege barred compliance without any finding that they knew their conduct was unlawful. This will naturally chill their candor on matters of national importance, which, in turn, impacts the quality of the advice the President receives from his trusted advisors. This issue is likely to recur in the current political climate. Additionally, the erroneous interpretation by the courts below prejudiced Dr. Navarro by relieving the Government of the burden of proving an element of the offense and depriving him of the ability to present a defense.

A. This case raises core separation-of-powers issues.

The case arises at a period of high political tension, and the D.C. Circuit’s interpretation of section 192 has opened the door for political opponents to escalate relatively mundane inter-branch subpoena disputes into *criminal* sentences. Dr. Navarro is unlikely to be the final Executive Branch official prosecuted under section 192. Shifts in Congressional and Executive power present a serious risk of cyclically triggering section 192 prosecutions, which would undermine the constitutional order and separation of powers.

This Court just recently affirmed the “‘public interest in candid, objective, and even blunt or harsh opinions in presidential decisionmaking,’ as well as the need to protect the ‘communications between high Government officials and those who advise and assist them in the performance of their manifold duties.’” *Trump*, 603 U.S. at 612 (quoting *Nixon*, 418 U.S. at 703, 707). But an Executive Branch official who

cannot rely on his good faith (but ultimately mistaken) belief that his conversations are privileged would naturally self-censor the advice he gives to the President. And if the President's trusted advisors cannot, under fear of later prosecution, provide the President with honest advice, it would directly impact the President's ability to exercise his core Article II powers, especially in sensitive areas such as foreign affairs. *See Trump v. Mazars USA, LLP*, 591 U.S. 848, 864 (2020) (noting “executive privilege . . . safeguards the public interest in candid, confidential deliberations within the Executive Branch; it is ‘fundamental to the operation of Government.’” (quoting *Nixon*, 418 U.S. at 708)); *see generally Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 545–61 (1977) (Rehnquist, J., dissenting).

But the Court can mitigate this threat by giving the word “willfully” in section 192 its traditional construction. *See supra* Section I.B. Requiring the correct mens rea will necessitate more inter-branch communication and accommodations for subpoenaed officials when there is uncertainty over what is and is not privileged. *See Wooden*, 595 U.S. at 378 (Kavanaugh, J., concurring) (explaining a “willful” mens rea requires the Government to prove more and thereby helps protect defendants against arbitrary or vague criminal statutes). As this Court has observed, for two centuries, disputes between Congress and the Executive over presidential information have been settled by “negotiation and compromise,” “hashed out in the ‘hurly-burly, the give-and-take of the political process between the legislative and the executive.’” *Mazars*, 591 U.S. at 859 (quoting Hearings on S. 2170 et al. before the Subcommittee on Intergovernmental

Relations of the Senate Committee on Government Operations, 94th Cong., 1st Sess., 87 (1975) (A. Scalia, Assistant Attorney General, Office of Legal Counsel)). But that tradition only works when a good-faith assertion of privilege is not a crime, so both branches have reason to bargain. Congress does not have such a reason if good faith is irrelevant to guilt. But an appropriate *mens rea* restores that incentive, while leaving the contumacious witness, who knows he has no basis to refuse, fully exposed to prosecution.

B. This case presents concerning issues that are likely to recur.

The issue in this case has arisen repeatedly and will likely continue to do so. Indeed, Dr. Navarro is petitioning this Court about a year after Stephen K. Bannon did so over the same issue. *See Bannon v. United States*, 146 S. Ct. 2155 (2026) (granting *certiorari*, vacating judgment, and remanding “for further consideration in light of the pending motion to dismiss the indictment.”). And granting *certiorari* here would not be unusual; the Court has granted *certiorari* in cases involving aspects of section 192 numerous times.⁵ *See Quinn*, 349 U.S. at 157

⁵ *See, e.g., Gojack v. United States*, 384 U.S. 702 (1966); *Yellin v. United States*, 374 U.S. 109 (1963); *Russell v. United States*, 369 U.S. 749 (1962); *Hutcheson v. United States*, 369 U.S. 599 (1962); *Deutch v. United States*, 367 U.S. 456 (1961); *Braden v. United States*, 365 U.S. 431 (1961); *Wilkinson v. United States*, 365 U.S. 399 (1961); *McPhaul v. United States*, 364 U.S. 372 (1960); *Barenblatt v. United States*, 360 U.S. 109 (1959); *Flaxer v. United States*, 358 U.S. 147 (1958); *Sacher v. United States*, 356 U.S. 576 (1958); *Watkins v. United States*, 354 U.S. 178 (1957); *Bart v. United States*, 349 U.S. 219 (1955); *Emspak v. United States*, 349 U.S. 190 (1955); *Quinn v. United States*, 349 U.S. 155 (1955);

(acknowledging the Court is likelier to grant *certiorari* in section 192 cases because of “the fundamental and recurrent character of the questions presented.”).

This case stems from a shift in the political winds, suggesting this issue will recur. Since the 1980s, the Government’s policy has generally been not to use section 192 as a prosecutorial tool. *See Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 119 (1984); *see also Bannon*, 2025 WL 1503223, at *11 (Rao, J., dissenting). That is a norm from a bygone era. *See Bannon*, 2025 WL 1503223, at *11 (noting that “[b]etween 1980 and 2017, Congress referred only six Executive Branch officials for prosecution” but “[b]etween 2019 and 2023, the House cited six former or current Executive Branch officials for criminal contempt of Congress” and “[t]he Department of Justice proceeded with charges against two of those officials[.]”).

The normative shift fuels the concern that the age of inter-branch accommodation and compromise is over, and the era of using section 192 for politically charged prosecutions is here. As Judge Rao stated, “disputes between the political branches” have historically been “resolved through accommodation and compromise.” Still now, “the floodgates have opened” to prosecutions of Executive Branch officials for criminal contempt of Congress. *Id.* at *10.

United States v. Rumely, 345 U.S. 41 (1953); *United States v. Fleischman*, 339 U.S. 349 (1950); *United States v. Bryan*, 339 U.S. 323 (1950); *Sinclair v. United States*, 279 U.S. 263 (1929); *Bannon v. United States*, 146 S. Ct. 2155 (2026).

Moreover, section 192 cases involving Executive Branch officials will continue to arise exclusively in the D.C. Circuit (where *Licavoli* will continue to apply). This is because when a House of Congress certifies a contempt charge, the statute directs the certification to “the appropriate United States attorney”—in practice, the United States Attorney for the District of Columbia—“whose duty it shall be to bring the matter before the grand jury for its action.” 2 U.S.C. § 194. Because the default occurs where the witness was commanded to appear, section 192 prosecutions are typically brought in the District of Columbia, where every appeal goes to the D.C. Circuit. *Licavoli* is therefore not one circuit’s reading of a federal statute; it is, as a practical matter, the only reading that any court applies (which is also why a circuit split is unlikely to occur). Therefore, the error will persist until this Court corrects it.

C. Dr. Navarro was denied the ability to present a defense.

When prosecuting section 192 offenses, “courts must accord to the defendants every right which is guaranteed to defendants in all other criminal cases.” *Watkins*, 354 U.S. at 208. But that did not happen here. Dr. Navarro was prohibited from presenting evidence and argument to negate the mens rea necessary to be convicted of a section 192 offense, and “the Government was not required to prove all the elements of” the offense beyond a reasonable doubt. *Bannon*, 2025 WL 1503223, at *3 (Rao, J., dissenting). He was denied these basic rights pursuant to D.C. Circuit case law that is inconsistent with this Court’s precedent. *See supra* Section I.C.

Courts relieving the Government of the burden of proving an element in politically charged prosecutions are especially concerning. And to the extent the Court's precedent creates any ambiguity that allows this to occur, it must be clarified because "care should be taken in every part of the system, not only to do right, but to satisfy the community that right is done." *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 172 n.19 (1951) (Frankfurter, J., concurring).

To be clear, the Court need not decide whether Dr. Navarro's executive privilege claim was made in good faith or would have ultimately prevailed. The issue was that the prosecution was not required to prove an essential element of the offense, and the court prevented the jury from hearing evidence and argument on Dr. Navarro's defense. Dr. Navarro was denied the basic rights to which every criminal defendant is entitled, and that alone warrants granting review.

CONCLUSION

The petition for a writ of certiorari should be granted.

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Respectfully submitted,

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