No. 26-474

IN THE

Supreme Court of the United States

PETER K. NAVARRO,

Petitioner,

v.

UNITED STATES,

Respondent.

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

BRIEF OF AMICI CURIAE OKLAHOMA AND 11 ADDITIONAL STATES IN SUPPORT OF PETITIONER

(***Additional States Listed on Inside Cover***)

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INTEREST OF THE AMICI CURIAE[1]

The State of Oklahoma and the States of Alabama, Florida, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, South Carolina, Texas, and West Virginia submit this brief as *amici curiae* in support of the Petition for a Writ of Certiorari.

The States have a direct interest in the question presented. State legislatures, like Congress, possess the power of inquiry, "with process to enforce it," *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927), and many States enforce that power through criminal statutes that, like 2 U.S.C. § 192, punish witnesses who "willfully" defy that process. Oklahoma's statute, which has been on the books for more than a century, makes it a misdemeanor for a witness before either house of the Legislature or an authorized committee to "willfully refuse[]" to be sworn, to answer "any material and proper question," or to produce "any material and proper books, papers, or documents." Okla. Stat. tit. 21, § 311 (first codified at R.L. 1910, § 2173); *see also id.* § 310. Statutes like these are rarely construed, and when they are, federal law is close at hand. Several States' statutes track Section 192 nearly verbatim. *See, e.g.*, Conn. Gen. Stat. § 2-46; La. Stat. Ann. § 24:4; Kan. Stat. Ann. § 46-1014. Louisiana's courts have described that State's provision as "the State's counterpart of the statutory contempt procedure provided by Congress in 2 U.S.C. § 192." *ASP, Inc. v. Cap. Bank & Tr. Co.*, 174 So. 2d 809, 814–15 (La. Ct. App. 1965). The Louisiana

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[1] *Amici* submit this brief pursuant to Sup. Ct. R. 37.2. *Amici* provided counsel of record for all parties timely notice of Oklahoma's intent to file this brief.

Supreme Court, in turn, has looked to the federal contempt statutes in deciding how that provision operates. *See Joint Legis. Comm. v. Strain*, 268 So. 2d 629, 635 (La. 1972). And this Court has applied principles first developed under Section 192 to state legislative-contempt proceedings. *See Slagle v. Ohio*, 366 U.S. 259, 265–67 (1961). The decision below will therefore govern more than federal prosecutions. It will shape the law of the States as well.

The States also have an interest in the interpretive question at the heart of the petition. Several States, including Oklahoma, have enacted statutory definitions of "willfully" in their criminal codes. *See, e.g.*, Okla. Stat. tit. 21, § 92. Those definitions control because they were expressly enacted by state legislatures. The decision below blurs the line between a definition enacted by a legislature and one inserted by a court. The States have an interest in ensuring that courts honor that difference.

SUMMARY OF THE ARGUMENT

In the criminal law, "willfully" ordinarily requires a "bad purpose." *Bryan v. United States*, 524 U.S. 184, 191 (1998). The D.C. Circuit nonetheless held that a defendant acts "willfully" under Section 192 whenever he or she "deliberately and intentionally defaults on a subpoena, even if he subjectively and mistakenly believed his default was lawful." Pet. App. A-38. That holding rests on *Licavoli v. United States*, 294 F.2d 207 (D.C. Cir. 1961). The D.C. Circuit has now twice declined to reconsider *Licavoli* en banc, most recently in this case without a single judge calling for a vote. Pet. App. A-90. Only this Court can correct the error.

Petitioner explains why *Licavoli* conflicts with the statute's text and with this Court's willfulness decisions. Pet. 9–16. *Amici* States write separately because they have experience on both sides of the line the petition draws, and that experience bears on both the merits and the need for review.

Amici can speak to what a legislature does when it actually intends the rule *Licavoli* announced: it expressly enacts that rule. Since 1910, Oklahoma law has provided by statute that "willfully" "implies simply a purpose or willingness to commit the act or the omission" and "does not require any intent to violate law." Okla. Stat. tit. 21, § 92. California and other States enacted the same definition, and those definitions continue to govern in those States. *See, e.g.*, Cal. Penal Code § 7(b)(1); *Terry v. Drummond*, 2026 OK CR 10, ¶¶ 7, 15, ___ P.3d ___. But Congress did not define "willfully" in Section 192 or anywhere in Title 2. *Licavoli* nonetheless construed the statute as though Congress had adopted a definition like Oklahoma's. That was error. When a legislature intends "willfully" to carry a meaning other than its ordinary one, it says so expressly. Here, Congress did not. And this Court has itself read "willfully" in a subpoena-default statute to protect a refusal made in good faith. *Fed. Power Comm'n v. Metro. Edison Co.*, 304 U.S. 375, 387 (1938). The structure of legislative-contempt statutes points the same way. Contempt statutes punish defiance of lawful authority. They were not designed to resolve genuine disputes over whether a demand is lawful by imposing criminal liability on the witness who guesses wrong in good faith.

The States' experience also shows why this Court should not wait to decide this question. No

circuit split is likely to develop, because prosecutions under Section 192 are brought almost exclusively in the District of Columbia and reviewed by a single court of appeals. Pet. 24. And the D.C. Circuit has made clear that it will not revisit the question on its own.

Nor will the decision below stay within the federal system or be confined to presidential advisers. Section 192 is the model for legislative-contempt statutes across the country, and state courts construing those statutes look to the federal decisions. The rule applied below governs every witness before Congress, including the ordinary citizen who, mistakenly but in good faith, asserts a testimonial privilege, a constitutional objection, or a challenge to a committee's authority. The States have a substantial interest in seeing the mental-state element of that rule settled correctly before their own courts apply it.

The question reached this Court last Term in *Bannon v. United States*, 146 S. Ct. 2155 (2026) (mem.), but the Court vacated and remanded "for further consideration in light of the pending motion to dismiss the indictment" without deciding it. *Id.* This case presents the question on a final judgment and a preserved objection. The petition should be granted.

ARGUMENT

I. THE DECISION BELOW READS INTO SECTION 192 A DEFINITION OF "WILLFULLY" THAT CONGRESS NEVER ENACTED.

A. Congress Enacted No Definition in Section 192, and the Statute's Text and This Court's Decisions Supply the Meaning.

Congress has never defined "willfully" for purposes of Section 192. The D.C. Circuit supplied a definition in 1961, holding that "[e]vil motive is not a necessary ingredient of willfulness" and that a "deliberate, intentional failure, without more," suffices. *Licavoli*, 294 F.2d at 208. *Licavoli* rested on *Sinclair v. United States*, 279 U.S. 263 (1929), *overruled in part on other grounds by United States v. Gaudin*, 515 U.S. 506 (1995), and *United States v. Bryan*, 339 U.S. 323 (1950), both of which predate this Court's modern willfulness decisions. The panel below followed the same path. Pet. App. A-38–A-40.

This Court's more recent decisions point the other way. "As a general matter, when used in the criminal context, a 'willful' act is one undertaken with a 'bad purpose.'" *Bryan v. United States*, 524 U.S. 184, 191 (1998); *see also Ratzlaf v. United States*, 510 U.S. 135, 137 (1994); *Cheek v. United States*, 498 U.S. 192, 200–01 (1991). Petitioner develops the conflict between that general rule and *Licavoli*, *see* Pet. 13–16, and *amici* will not repeat the analysis here. "Willfully" presumptively separates the defendant who knowingly flouts the law from the one who honestly misjudges it. That separation matters most

where the legality of the underlying conduct turns on questions seasoned lawyers dispute. *Cf. Bryan*, 524 U.S. at 194.

The text of Section 192 confirms that the presumption holds here. The statute describes two offenses. A summoned witness commits one if he or she "willfully makes default." A witness commits the other if, "having appeared," he or she "refuses to answer any question pertinent to the question under inquiry." 2 U.S.C. § 192. Congress attached "willfully" to the first offense and not the second, and this Court has recognized the difference: "Two distinct offenses are described in the disjunctive, and in only one of them is willfulness an element." *United States v. Murdock*, 290 U.S. 389, 397 (1933), *overruled in part on other grounds by Murphy v. Waterfront Comm'n of N.Y. Harbor*, 378 U.S. 52 (1964). Petitioner explains why that structure cannot be squared with a reading that gives both clauses the same mental state. Pet. 9–12. The States' codes sharpen the point. *See infra* Part I.B. A legislature that wants "willfully" to mean no more than "intentionally" throughout its criminal law has a ready means of saying so, and Oklahoma, California, and Idaho used it. Congress did the opposite. It enacted no general definition, and it placed the word in one clause of Section 192 while omitting it from the other. *Licavoli* nonetheless held that the intent required under the two clauses "is the same in nature." 294 F.2d at 208. A court that treats the two clauses alike has ignored Congress's choice to treat them differently and substituted the choice a different legislature made.

This Court has read "willfully" to protect a good-faith refusal in a statute cut from the same cloth. The Federal Power Act makes it a misdemeanor for

any person who "willfully shall fail or refuse to attend and testify . . . or to produce books, papers, . . . or other records, . . . in obedience to the subp[o]ena of the Commission." 16 U.S.C. § 825f(c). Of that provision this Court said: "The qualification that the refusal must be 'willful' fully protects one whose refusal is made in good faith and upon grounds which entitle him to the judgment of the court before obedience is compelled." *Fed. Power Comm'n v. Metro. Edison Co.*, 304 U.S. 375, 387 (1938). Courts still read it that way. The Fifth Circuit recently relied on *Metropolitan Edison* in holding that a jury could find a witness's refusal to testify to be "an understandable and good-faith effort to avoid perjury, not a willful violation of a court order." *United States v. Beaulieu*, 973 F.3d 354, 361 (5th Cir. 2020). The same is true of the parallel agency-subpoena provisions. *See Reisman v. Caplin*, 375 U.S. 440, 447 & n.6 (1964) (noncompliance with an Internal Revenue summons "is not subject to prosecution thereunder when the summons is attacked in good faith"); *Casey v. FTC*, 578 F.2d 793, 797 (9th Cir. 1978) ("[T]here is no risk of criminal prosecution where one in good faith challenges an agency subpoena by noncompliance."); *Rolls-Royce, Inc. v. Stimson*, 56 F. Supp. 22, 24 (D.D.C. 1944) ("'Willful refusal,' as used in its context here, has never meant a refusal in good faith for the purpose of having a legitimate dispute settled."). That is the work the word should do in Section 192 as well. Neither *Licavoli* nor the decision below mentions *Metropolitan Edison*.

The States' experience confirms how courts construe the term when the legislature has not defined it. Where no codified definition exists, state courts of last resort have looked to text and context,

and they have declined to treat "willfully" as surplusage. The Connecticut Supreme Court, following *Bryan*, held that "knowingly and wilfully" in that State's campaign-finance laws requires proof that the defendant knew the conduct was unlawful. *State v. Newton*, 194 A.3d 272, 281, 284–86 (Conn. 2018). The court relied in part on a neighboring provision that required only that the conduct be done "knowingly"; the different language meant that "knowingly and wilfully" had to require "more than mere knowledge of the act." *Id.* at 286. Section 192 presents the same contrast within a single sentence. The Iowa Supreme Court requires proof of a voluntary and intentional violation of a known legal duty for offenses that are wrong only because prohibited. *State v. Tippett*, 624 N.W.2d 176, 178 (Iowa 2001); *State v. Azneer*, 526 N.W.2d 298, 299–300 (Iowa 1995). And New York's high court reads the undefined term the same way: awareness that one's conduct is illegal "is normally embodied in the term 'willfully.'" *Gormley v. N.Y. State Ethics Comm'n*, 900 N.E.2d 943, 946 (N.Y. 2008) (citing *Bryan*, 524 U.S. at 193); *see People v. Coe*, 522 N.E.2d 1039, 1040–41 (N.Y. 1988) (rejecting construction requiring only that defendant "acted deliberately and voluntarily"). These decisions do not hold that "willfully" always carries that meaning. They show that, absent an enacted definition, courts give the word work to do.

To be clear, *amici* States do not contend that "willfully" carries the *Bryan* meaning in every criminal statute. Their own codes prove otherwise. The point is a narrower one. Where the legislature has defined the term, the definition controls. Where it has not, the word must be construed, and here text, structure, and this Court's decisions all point the

same way. *Licavoli* applied the States' codified definition to a federal statute where no codified definition exists, and the decision below perpetuates that error.

B. When a Legislature Intends "Willfully" to Require Only an Intentional Act, It Typically Says So Expressly.

The rule applied below is a familiar one. Under *Licavoli*, "willfully" in Section 192 requires only a "deliberate, intentional failure, without more." 294 F.2d at 208. That rule is not wrong as a rule of criminal law. Indeed, it is the law in Oklahoma and in several other States. But it is the law in those States because their legislatures expressly enacted it, not because their courts inferred it from silence.

Oklahoma's first codifiers provided that "[t]he term 'willfully' when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage." Okla. Stat. tit. 21, § 92 (first enacted as R.L. 1910, § 2819). California adopted the same definition, Cal. Penal Code § 7(b)(1), and its courts apply it as written. *See People v. Lowery*, 257 P.3d 72, 77 (Cal. 2011). So did Idaho. Idaho Code § 18-101(1); *see State v. Hall*, 413 P.2d 685, 692 (Idaho 1966). And these definitions continue to govern. Earlier this year, the Oklahoma Court of Criminal Appeals "explicitly adopt[ed] the definition of willfulness in 21 O.S.2021, § 92" as the mens rea for a state offense, observing that the definition "has been on the books in Oklahoma since 1910" and repeating the gloss the court gave it more than a century ago: willfully is "a synonymous term

with 'intentionally,' 'designedly,' 'without lawful excuse'—that is, not accidentally." *Terry*, 2026 OK CR 10, ¶¶ 7, 15 (quoting *Miller v. State*, 130 P. 813, 815 (Okla. Crim. App. 1913)); *see also Terry v. Drummond*, 183 F.4th 1281, 1292 (10th Cir. 2026).

Nor is that definition the only form this legislative choice takes. States that adopted the Model Penal Code made the same choice in the Code's own words. Under the Code, knowing conduct satisfies a willfulness requirement, and knowledge that conduct is unlawful is an element only where the offense says so. Model Penal Code § 2.02(8)–(9). Pennsylvania enacted that rule nearly verbatim, 18 Pa. Cons. Stat. § 302(g), (h), and Illinois adopted it in substance. *See* 720 Ill. Comp. Stat. 5/4-5, 5/4-3(c); *see also* Colo. Rev. Stat. § 18-1-501(6) (equating "willfully" with "knowingly"). In either form, the legislature has said in plain terms that the defendant's understanding of the law is immaterial.

The relevance of these codes is straightforward. When a legislature intends "willfully" to require nothing more than an intentional act, it says so expressly. A codified definition displaces any contrary judicial presumption; that is the reason it is enacted. *See Stenberg v. Carhart*, 530 U.S. 914, 942 (2000) ("When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning."). But where the legislature has not spoken, a court must determine the meaning of "willfully" through the ordinary tools of statutory construction. It should not reach the same result by treating two differently worded clauses as interchangeable. That is what *Licavoli* did. 294 F.2d at 208.

C. The Structure of Legislative-Contempt Statutes Confirms That Criminal Liability Was Not Designed to Resolve Good-Faith Disputes over the Lawfulness of a Demand.

Legislative-contempt statutes have never punished the refusal of an unlawful demand. Section 192's refusal-to-answer clause reaches only questions "pertinent to the question under inquiry." 2 U.S.C. § 192. This Court has enforced that limitation strictly, holding that a witness is entitled to know the subject of the inquiry with the same clarity that the Due Process Clause requires of any element of a criminal offense. *Watkins v. United States*, 354 U.S. 178, 208–09 (1957); *see also Quinn v. United States*, 349 U.S. 155, 165–66 (1955). And when a state commission met witnesses' objections by simply passing on to the next question, the Court held that it "would deeply offend traditional notions of fair play and deprive [the witnesses] of due process" to say that they "willfully and contumaciously refused to answer" in those circumstances. *Slagle*, 366 U.S. at 266. Those safeguards reach only the witness who appears and is given "a clear-cut choice between compliance and noncompliance." *Quinn*, 349 U.S. at 166. For the witness charged with default, "willfully" is the only safeguard the statute supplies, and the decision below empties it.

State statutes follow the same design. Oklahoma's legislative-contempt statute reaches only refusals to answer "material and proper" questions and to produce "material and proper" documents. Okla. Stat. tit. 21, § 311. The accused in an indirect-contempt proceeding must be "notified in writing of

the accusation" and, upon demand, is entitled to a trial by jury. *Id.* § 567(A). And no punishment for contempt may be imposed "until an opportunity to be heard is given." Okla. Const. art. II, § 25. With a thin mens rea like Oklahoma's, these lawfulness elements, not the mental-state element, separate the witness who defies a lawful demand from the one who resists an unlawful one. In more than a century, neither Section 310 nor Section 311 has produced a reported prosecution.

These provisions reflect a common judgment. Contempt statutes punish defiance of lawful authority. They were not designed to resolve genuine disputes over whether a demand is lawful by imposing criminal liability on the witness who guesses wrong in good faith. A construction of "willfully" that produces that result is difficult to square with the structure of Section 192 and its state counterparts. This Court should grant review and restore to the default clause the element Congress wrote into it.

II. THE QUESTION WARRANTS THIS COURT'S REVIEW NOW.

A. No Circuit Split Is Likely to Develop, and the D.C. Circuit Will Not Correct Itself.

This Court ordinarily waits for the courts of appeals to divide. Waiting would accomplish nothing here. When a House of Congress certifies a contempt, the statute directs the certification to "the appropriate United States attorney, 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, and congressional committees sit in Washington, the prosecution is

brought in the District of Columbia, and the appeal goes to the D.C. Circuit. Pet. 24. *Licavoli* is therefore not one circuit's reading of a federal statute that other circuits remain free to test. It is, as a practical matter, the controlling construction of the default clause, and no other court of appeals is positioned to disagree with it.

Nor is there any prospect that the D.C. Circuit will revisit the question on its own. That court reaffirmed *Licavoli* two years ago. *United States v. Bannon*, 101 F.4th 16, 21 (D.C. Cir. 2024), *vacated*, 146 S. Ct. 2155 (2026) (mem.). Rehearing en banc was denied over the dissent of three judges, who would have overruled *Licavoli* because it "read the willfulness requirement out of the statute," and with a separate statement from a fourth observing 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." *United States v. Bannon*, No. 22-3086, 2025 WL 1503223, at *6 (D.C. Cir. May 27, 2025) (Rao, J., joined by Henderson and Walker, JJ., dissenting from denial of rehearing en banc); *id.* at *1 (statement of Katsas, J.). The panel below treated the question as settled. Pet. App. A-39. And the full court denied rehearing in this case without any judge requesting a vote. Pet. App. A-90. The anomaly is now internal to the D.C. Circuit's own case law: that court applies the *Bryan* presumption to other criminal statutes, *see United States v. Burden*, 934 F.3d 675, 690–92 (D.C. Cir. 2019), while *Licavoli* exempts Section 192 alone.

The question also remains open in this Court. It was presented last Term in *Bannon*, but the Court granted the petition, vacated the judgment, and remanded "for further consideration in light of the

pending motion to dismiss the indictment." 146 S. Ct. 2155. That disposition did not decide what "willfully" means in Section 192. This case comes to the Court on a final judgment, with the instruction quoted in full and the objection preserved. Pet. 4, 7.

B. The Decision Below Reaches Every Witness and Will Shape State Law.

The petition emphasizes the separation-of-powers stakes for Executive Branch officials. Pet. 20–22. *Amici* agree those stakes are serious. But the rule applied below is not limited to presidential advisers or to executive privilege. Section 192 applies to "[e]very person" summoned, 2 U.S.C. § 192, and its state counterparts apply to every witness called before a state legislative committee. The witness who asserts a spousal privilege, a First Amendment objection, or a challenge to a committee's jurisdiction, and who turns out to be wrong, stands in the same position as Petitioner. Under the decision below, that witness's honest belief is irrelevant, and the jury will be told so. *See* Pet. App. A-103, A-111. Nothing in the text or history of Section 192 suggests that Congress intended to punish that witness for an honest mistake of law.

The occasions for such prosecutions are not rare. Disputes over congressional subpoenas have recurred for two centuries. *See Trump v. Mazars USA, LLP*, 591 U.S. 848, 859–61 (2020). Each one carries the potential for a referral under Section 192. *See* 2 U.S.C. § 194. The same is true in the States, whose legislatures investigate, subpoena, and occasionally meet resistance. Changes in political control make it more likely, not less, that these statutes will be

invoked against witnesses whose objections were held in good faith.

And the federal rule is unlikely to remain a federal one. State legislative-contempt statutes are rarely construed, so the first prosecution in any State will be litigated against a body of federal precedent and little else. State courts have already described their statutes as counterparts of Section 192 and have looked to the federal scheme in applying them. *ASP, Inc.*, 174 So. 2d at 814–15; *Strain*, 268 So. 2d at 635. Louisiana's statute shows how closely the state provisions track the federal one. A witness is in contempt if he or she "willfully defaults by failing to appear or to produce papers or other evidence," or, "having appeared, refuses to answer any question pertinent to the question under inquiry." La. Stat. Ann. § 24:4(A)(1), (3). The word "willfully" appears in the first clause and not the last, just as in Section 192. This Court, for its part, has carried Section 192 principles into its review of state contempt convictions. *Slagle*, 366 U.S. at 265–67. A State whose legislature has enacted a definition like Oklahoma's has made its own choice, and its courts will apply it. But in the States that have enacted no definition, courts asked to construe "willfully refuses" in a legislative-contempt statute will look to how the federal courts have read "willfully makes default." Today the only answer they will find is *Licavoli*'s. The mental-state element of Section 192 should be settled by this Court before that answer is exported into the law of the States.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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