The Alitos and Their Flags

0:01

from New York Times I'm Michel borro

0:04

this is the

0:05

[Music]

0:10

daily today there is mounting pressure

0:14

tonight on Supreme Court Justice Samuel

0:16

Alo after a report that a symbol used by

0:18

election deniers was on display at his

0:21

home 11 days after the January 6 Tech

0:24

neighbors told the New York Times that

0:26

Justice Samuel Alo had an American flag

0:29

hanging up upside down outside of his

0:31

house for a guy who is a Supreme Court

0:35

Justice that let that happen at his own

0:39

home it's just sad more controversy at

0:42

the Supreme Court according to the New

0:45

York Times a second provocative flag was

0:48

flown at a home belonging to Justice

0:50

Samuel Alito I think the question is how

0:52

many magga battle Flags has a Supreme

0:54

Court Justice have to fly until the rest

0:56

of the Court takes it seriously The Saga

0:58

of Justice Sam Alo the flags that flew

1:02

over his homes and the extraordinary

1:05

Fallout that they've created Our Guest

1:08

is jod caner the reporter who broke the

1:12

[Music]

1:19

story it's Tuesday May

1:22

[Music]

1:28

28th should we get started

1:30

sure I want to thank you for being in

1:32

the studio with me because as you can

1:34

probably hear I have a pretty nasty cold

1:35

which makes you very brave for sitting

1:37

across from me well Michael there was

1:39

the time I thought I gave you co right

1:41

but you did but you didn't you didn't

1:43

thank God okay so just to begin Jody how

1:46

did your reporting on this story begin

1:49

so I got a tip that shortly after

1:52

January 6th an upside down American flag

1:57

which at the time had really become a

2:00

symbol of the stop the steel campaign

2:03

the effort to overturn the election the

2:05

Insurrection at the capital had flown

2:08

outside Justice alito's home in Virginia

2:12

that's a heck of a tip I wonder what

2:13

you're thinking when you first get it

2:15

heck of a tip but I you know we hear a

2:17

lot of things from a lot of people

2:20

Michael and people are mistaken

2:23

sometimes and then I was also thinking

2:26

wait a second is it possible that the

2:29

Alo house old is showing support right

2:32

outside their home for the riot at the

2:35

capital this is a Justice of the United

2:38

States Supreme Court who's supposed to

2:40

embody the law right not display open

2:45

Defiance of it exactly and so what do

2:48

you do with this tip well I make a round

2:50

of phone calls to everyone who lives

2:52

around Alo remember that most people

2:55

don't even pick up their phones now

2:57

because there are so many junk calls and

2:59

trustworthy things a lot of people

3:02

didn't want to talk to a reporter right

3:04

and also when you're making these calls

3:05

you don't want to plant things in

3:07

people's mind so I didn't want to ask

3:10

did you see an upside down flag you know

3:12

I asked did you see anything unusual

3:15

outside the Alo home during this period

3:17

and there were many people who didn't so

3:21

I began to think like maybe this tip is

3:23

wrong exactly and then I reached

3:27

somebody who heard about it so then I

3:29

needed to reach people who had seen it

3:32

so I got a little closer and then I

3:35

reached somebody who had taken a

3:36

photograph just describe this photo so

3:40

the elos live on a really pretty Block

3:42

in Virginia it looks like a refuge it's

3:46

really quiet it's kind of bucolic

3:48

there's bird song in the spring and they

3:51

live in a very normal looking house that

3:53

has a flag pole next to it and in this

3:56

photo that was taken on January 17th

4:00

2021 the American flag is absolutely

4:03

hanging upside down and I thought this

4:06

is

4:09

real but I needed to do more research

4:11

into what the upside down flag meant and

4:14

what it meant at that time because this

4:17

has been a kind of mutable symbol in

4:19

America huh so the history is that it

4:22

started as a kind of military distress

4:25

symbol an SOS a message that something

4:28

is really

4:30

really wrong I am so desperate here that

4:32

I am turning the flag which is supposed

4:34

to be respected upside down and it has a

4:38

long history of being used in protests

4:40

it was used by the left in the Vietnam

4:42

War it's been used by both sides but

4:46

what we quickly found is that starting

4:49

around the fall of 2020 just before the

4:52

election and then certainly afterwards

4:56

During the period of the capital Riot

4:58

this had coales into a leading symbol of

5:02

the stop the steel campaign we found

5:05

message boards where Trump supporters

5:07

were being exhorted to turn their flags

5:11

upside down in protest of what was

5:14

happening we found news clippings from

5:16

all over the country where neighbors had

5:19

turned their flags upside down to the

5:22

horror of other neighbors who felt that

5:24

it was a really inappropriate form of

5:26

protest but the overall picture is that

5:29

but at this time the upside down

5:32

American flag has a real meaning and

5:35

that meaning is the election has been

5:41

stolen so at this point in your

5:43

reporting you've got the flag firmly

5:44

established you've got its meaning in

5:46

hand so what do you do we ask Justice

5:49

Alo about it so I send these questions

5:53

to Supreme Court we wait we have no idea

5:57

what Justice Alo is going to say and and

5:59

when you're an investigative reporter

6:01

and you send off these kinds of queries

6:04

you really have one primary question

6:06

above all others which is are they going

6:09

to deny is he going to dispute the basic

6:13

facts of what we're reporting and and we

6:17

get this reply that's kind of

6:19

fascinating because he says it's about a

6:23

neighborhood dispute he I'll redo the

6:26

quotes he says I had no involvement

6:29

whatso ever in the flying of the flag it

6:31

was briefly placed by Mrs Alo in

6:34

response to a neighbor's use of

6:36

objectionable and personally insulting

6:39

language on yard signs huh so he's not

6:43

denying that it happened nor is he

6:45

denying that he had knowledge of it at

6:47

the time right what did you make of that

6:50

what is this dispute that he seems to be

6:52

referring to I best you can tell yeah so

6:54

it turns out there's a younger couple

6:57

living on the Block and they are not shy

7:00

about their political views they put up

7:02

signs criticizing Trump the signs have

7:04

expletives on them Mrs Alo objects very

7:08

strongly to those signs and there are

7:11

accusations on both sides of

7:13

inappropriate behavior uhhuh so what are

7:16

you thinking so we're thinking we better

7:19

go ahead and publish the story right

7:21

listen a Bedrock rule of judicial ethics

7:24

not just the letter of these various

7:27

judicial rules but the spirit of them is

7:30

that you do not make political displays

7:34

and I'm talking to Legal experts who are

7:36

really stressing that judicial rules are

7:39

about even the

7:41

appearance of partiality even giving

7:44

people the wrong

7:45

impression and when they hear this

7:47

explanation they're saying how could a

7:49

neighborhood dispute justify breaking

7:53

such a fundamental rule of judicial

7:55

conduct and this is not some theoretical

7:58

question of

8:00

impartiality remember that this is

8:02

greatly heightened not only because it's

8:04

the Insurrection it's January 6th it's

8:06

the 2020 election it's former president

8:08

Trump but remember that the Supreme

8:11

Court has to deal with all of this the

8:14

court is about to issue these two

8:18

climactic rulings in the Trump and

8:21

January 6th story both are going to bear

8:24

on the coming election in different ways

8:27

one is about the scope president Trump's

8:31

immunity for his actions during that

8:33

period for trying to overturn the

8:35

election the second is about one of the

8:38

laws that can hold the January 6th riers

8:41

and president Trump accountable

8:43

potentially it's about a particular

8:45

obstruction law right and whether it is

8:48

being fairly and properly applied to

8:51

January 6th right so suddenly the

8:53

question would seem to be is Justice Alo

8:56

having had this flag above his house

8:58

coming to these two hugely important

9:01

cases about January 6th impartially or

9:04

has he started to tip his hand about how

9:07

he feels about the events at the center

9:09

of these cases

9:12

correct and then those questions only

9:14

become stronger because then we get a

9:17

tip and the tip is that there's a second

9:20

flag

9:24

[Music]

9:31

we'll be right

9:35

back so Jody tell us about this second

9:38

tip about a second flag so it's hours

9:42

after we've broken the story of the

9:44

upside down American flag in Virginia

9:47

and then we get this tip the New York

9:50

Times has a tip line where you can send

9:51

information it's NY Times back slash

9:54

tips and lo and behold a reader has sent

9:58

in a tip

10:00

about a second flag associated with

10:02

January 6th at the alito's other home a

10:06

beach house in New Jersey huh and she

10:09

sent a photograph wow let me just start

10:11

with the idea of a second flag

10:14

associated with January 6th what is this

10:17

flag that you have now gotten a

10:19

photograph of over the alos house in New

10:22

Jersey okay so picture a white

10:24

background a green pine tree in the

10:27

center and the words of appeal to Heaven

10:31

at the top of the flag now this is a

10:33

very old American flag it was created

10:36

around the time of the Revolutionary War

10:38

and until about a decade ago it was kind

10:40

of a relic it was really obscure the

10:43

kind of thing that was in museums but

10:45

then it gets revived by a very specific

10:48

group with a very specific purpose which

10:52

is well there's this religious leader

10:55

named Dutch sheets he's a leader of a

10:58

loose group that scholar call the New

11:00

Apostolic Reformation this is a

11:03

far-right Evangelical group and their

11:06

real goal is to kind of re christianize

11:08

the country and especially the

11:12

government they have these Grand

11:15

Ambitions and when he discovers this

11:17

flag in 2013 he sees this as the symbol

11:21

of what he wants to do so he says

11:25

looking back at the last couple of

11:26

Decades of Juris Prudence is not not

11:29

only that the Supreme Court at this

11:31

point is too liberal but that it's evil

11:34

that it's introducing bad things to the

11:35

country and he really admires Justice

11:38

Alo he kind of refers to him as their

11:41

great hope because Justice Alo cares

11:44

about religious liberty uh as he does he

11:47

opposes the Supreme Court's same-sex

11:49

marriage decision so one of the things

11:52

dut sheets does to popularize this flag

11:55

and the set of ideas is that he tries to

11:57

get the flag into the hands of powerful

12:00

people he gives it to Sarah Palin he

12:02

gives it to all sorts of political

12:05

leaders this group also presents it just

12:09

a few weeks before the 2020 election to

12:12

president Donald Trump so this group has

12:15

become very very ardently supportive of

12:20

President Trump in the fall of 20120

12:23

they're pushing very hard for his

12:26

reelection and when he loses they become

12:29

a kind of religious arm of the stop the

12:32

steel campaign D sheets does a mega

12:35

church tour where he tells people that

12:37

the election is stolen and they should

12:40

be really alarmed and as a result on

12:43

January 6th we end up seeing this appeal

12:46

to Heaven flag peppered all over the

12:49

scene at the capital

12:52

[Music]

12:55

Riot huh so this flag which according to

12:59

this Photograph sent into the New York

13:01

Times tipline is hanging above Justice

13:04

alito's second

13:06

home by the time it's doing that quite

13:09

recently is an emblem basically of stop

13:13

the steal for the American Christian

13:15

right yes I would say it stands for

13:17

three things it is highly associated

13:20

with support for president trump it is

13:22

highly associated with January 6th and

13:25

the stop the steel campaign and also

13:28

with the this idea that Christianity

13:31

needs to retake the country and its

13:33

government so we start with one photo

13:36

but we want to understand the duration

13:39

because okay was this flag just up for 5

13:41

minutes no we come up with photos from

13:45

July August and September of

13:49

2023 two plus years after January 6th

13:54

exactly and the timing of last summer is

13:56

really significant first of all it shows

13:58

that the first flag in Virginia is not a

14:01

one-off it just seems like much less of

14:03

a random event but second of all these

14:07

January 6th legal cases are in the

14:11

process of arriving at the court right

14:13

one of them the obstruction case about

14:16

the law for prosecution is actually

14:20

arriving at the court During the period

14:23

the flag is being flown the docket

14:25

clearly reflects that the first papers

14:27

were there last summer

14:29

and then Trump has already been indicted

14:32

and there's a pretty good chance that

14:34

that proceeding is going to end up at

14:36

the Supreme Court and yet this flag

14:38

flies correct and then the other thing

14:40

happening at the court around this time

14:43

is that the justices are trying to

14:45

finalize an Ethics code remember there's

14:48

been a ton of controversy about the

14:50

conduct of the

14:52

justices why aren't Supreme Court

14:54

Justices Bound by the same rules as

14:56

other federal judges and in inside the

15:00

court they are trying to work out what a

15:02

code of conduct might say Justice Elena

15:05

Kagan gives a speech during this time

15:08

saying we're really close we're hoping

15:11

to have something for you soon but there

15:13

are some final disagreements we're

15:14

trying to work out and yes right at this

15:17

moment the elite oh home in New Jersey

15:20

is flying this flag that seems clearly

15:23

over the line okay so what does Justice

15:26

Alo have to say about this flag nothing

15:30

he declines to respond got it Jord the

15:33

inevitable question here is how do these

15:36

flags fit into our understanding of

15:39

Justice Samuel Alo as you said and as

15:42

most people who know the court

15:44

understand he is very conservative

15:47

that's not really in

15:49

dispute but does this flag deepen our

15:53

understanding of that or is it genuinely

15:55

surprising in what it reveals about the

15:58

depth of that

15:59

so here's what we do know and what we

16:01

don't know Justice Alo is a very

16:03

conservative Justice right one of the

16:06

kind of twists of this current ERA on

16:08

the court is that the justi is appointed

16:10

by President Donald Trump which we think

16:13

of as so conservative which we think of

16:14

as so conservative are not as

16:17

conservative as Bush justices like

16:21

justice Alo and Justice Thomas Justice

16:24

Alo is very open about his feelings

16:27

about religious liberty cases he is the

16:30

Justice who drove the Dos decision that

16:33

overturned Ro v Wade and he authored

16:36

that majority opinion I mean he is very

16:39

clear about his beliefs in his opinions

16:43

but these flags raise I think a new set

16:47

of questions about him both about his

16:51

beliefs and his ethics listen I just

16:54

want to remind you that we don't know

16:55

everything about when or by who these

16:58

flags were raised we don't know all the

17:01

details but they do raise a question of

17:04

why two of his homes appeared to be

17:08

flaunting these beliefs in a kind of

17:11

open Defiance of all the Norms of how

17:15

judges should

17:16

behave I'm curious what the response to

17:19

your reporting has been once it becomes

17:21

clear I think objectively speaking that

17:24

the raising of these flags seems to be

17:27

at odds with ecal guidelines for federal

17:30

judges what do people have to say about

17:32

it there are some conservatives who have

17:34

written it off what's the controversy

17:36

here am I missing something yeah Kaylee

17:38

this is just another partisan smear

17:40

against Justice Alo he's under no

17:42

obligation to recuse from cases because

17:44

of a flag his wife flies no one besides

17:47

the times this week suggested that this

17:50

was a symbol of insurrection a symbol of

17:52

criminality and all of a sudden this is

17:54

accepted wisdom you know people who are

17:57

judges on the Supreme Courts have

17:58

personal lives they have families and I

18:00

don't think they're necessarily

18:01

responsible for everything their

18:02

families do or say but also it is

18:07

stunning there's been a lot of shock

18:09

it's not enough to be a Supreme Court

18:11

Justice flying one magga battle flag at

18:15

your house you got to have two houses

18:17

and fly two magga battle Flags one at

18:21

each house he definitively needs to

18:24

recuse himself from any matter pending

18:29

before the United States Supreme Court

18:31

that has to do with the January 6

18:34

violent Insurrection in Congress there

18:37

have been a lot of calls for his recusal

18:39

from the January 6th cases ESP he should

18:42

not show up and vote on these cases

18:44

correct because there is a law that

18:46

binds all federal judges including

18:48

Supreme Court Justices on recusal and a

18:51

lot of people are saying this meets the

18:53

recusal standard without question he

18:55

needs to recuse himself from those cases

18:58

step aside on all the cases that

19:01

involved Donald Trump there are even

19:03

Republican Senators you know I mean I

19:05

don't know what happened you know all I

19:07

can say is it created a situation that

19:10

we're all talking about Senator Lindsey

19:13

Graham criticized Justice Alo yeah I

19:16

think it was a mistake but I'll leave it

19:19

up them to explain it but at the end of

19:21

the day the question is really what is

19:23

happening inside the Supreme Court what

19:26

do you mean because one thing we know

19:28

about the court is that it's essentially

19:30

self-governing they've created their own

19:33

ethics code but there's no enforcement

19:36

mechanism you know Michael we've talked

19:38

about this on the show before these are

19:40

nine individually confirmed

19:43

justices Chief Justice John Roberts is

19:45

the titular head of the Court he's the

19:47

chief administrator he's not really

19:49

their boss right so it's unclear that

19:53

even if other members of the Court think

19:55

this was a really bad idea if they can

19:58

do anything

19:59

to hold Justice Alo accountable so it's

20:01

quite likely that the repercussions of

20:02

having these two flags fly over these

20:05

two houses of a Supreme Court Justice

20:07

will be absolutely nothing maybe I'm not

20:10

ready to make a prediction on that yet

20:12

but I will tell you this these two

20:15

January 6th cases were already so

20:18

fraught these are so wrapped up in

20:20

politics they're about the last election

20:24

they're about which features candidates

20:25

who will be in the next election exactly

20:28

everything about the cases even the

20:30

timing even the small procedural details

20:34

of you know what happens when in each

20:37

case let alone the big decisions that

20:40

the court makes about these two cases

20:43

will have political consequences and the

20:46

court was kind of already in a bind with

20:48

them because it's been clear that no

20:51

matter what they decide on either of

20:54

these two issues the challenge of

20:56

getting a broad swath of Americans to

21:00

really accept these decisions as

21:02

authoritative is immense and these flags

21:06

just don't make it any

21:08

easier Jody I can't end this

21:09

conversation without asking you a

21:11

somewhat provocative question that I

21:12

think is pretty important it's not

21:14

exactly a secret at this stage of

21:16

America's history that our Supreme Court

21:18

has justices on it who operate in a way

21:21

that feels partisan and so is this kind

21:25

of an open acknowledgement of something

21:27

that we've known for really long time

21:30

which is that the justices take pretty

21:33

predictable votes on questions that are

21:38

ideological and Is AO basically just

21:41

saying let's dispense with the illusion

21:44

that we are anything other than

21:46

political actors in the judicial

21:48

landscape and I so don't feel the need

21:52

to hide that fact anymore that I or my

21:54

wife or both of us just going to hoist a

21:56

flag right over our house saying it

21:59

look the Supreme Court has always been

22:01

political throughout its history There's

22:04

No Illusion about the way Supreme Court

22:06

Justices get appointed but the

22:09

commitment has always been to abandon

22:12

partisanship at the door that's what

22:14

they all say they're going to do in

22:17

their confirmation hearings I put on

22:19

this robe and I take off my politics

22:20

correct so my question for justice Alo

22:23

is are you still committed to that way

22:26

of operating

22:29

and my question to the court as a

22:31

reporter is well once a Justice appears

22:35

not to be acting that way what will the

22:38

court do about

22:40

[Music]

22:51

it well Dy thank you very much thank you

22:56

[Music]

23:18

we'll be right

23:21

[Music]

23:26

back here's what else you need

23:29

to no day an Israeli air strike in the

23:32

city of Rafa on Sunday killed at least

23:34

45 people who were Sheltering in a

23:37

makeshift tent camp according to the

23:40

Gaza Health

23:41

Ministry the attack fueled growing

23:44

outrage over Israel's military tactics

23:47

the strike occurred just outside what

23:49

Israel has designated as a humanitarian

23:51

Zone where it's told Palestinian

23:54

civilians in Rafa to seek shelter and it

23:57

came just days after the International

23:59

court of justice ordered Israel to end

24:01

its military offensive in Rafa an order

24:04

that Israel has

24:07

ignored on Monday Israel's prime

24:09

minister called the civilian deaths a

24:12

tragic accident and accused Hamas of

24:15

deliberately hiding among the civilian

24:18

population in

24:21

Gaza today's episode was produced by mu

24:24

zi Eric krupky and Luke Vander pluk it

24:27

was edited by Michael benois and Lisa

24:29

Chow contains original music by Mar

24:32

Lozano and Dan Powell and was engineered

24:35

by Alyssa Moxley our theme music is by

24:38

Jim brunberg and Ben lansberg of

24:40

wonderly special thanks to aric Toler

24:43

and Julie

24:50

Tate that's it for da I'm Michael B see

24:55

you tomorrow

24:59

[Music]