Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NUINIK *v.* UNITED STATES

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

No. 05–27. Argued May __, 2018—Decided May 22, 2018

After a Las Vegas jury convicted Nuinik of false arrest, he appealed because the District Court had failed to accommodate his request to depose three witnesses. He sought a new trial where he would be able to fully present his case to the jury.

Held: The District Court violated the Compulsory Process Clause by failing to accommodate his intended witness depositions.

(a) The defendant's right to compulsory process is designed to vindicate the principle that the ends of "criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts." *United States* v. *Nixon*, 418 U. S. 683, 709. The District Court should have allowed the defendant to "compel[ ] the attendance of favorable witnesses at trial and . . . put before [the] jury evidence that might influence the determination of guilt." *Pennsylvania* v. *Ritchie*, 480 U. S. 39, 56 (1987).

KAGAN, J., delivered the opinion of the Court, in which HOLMES, C. J., and GINSBURG, MARSHALL, GORSUCH, THOMAS, and O'CONNOR, JJ., joined. BORK, J., filled an opinion concurring in part and dissenting in part. SOUTER, J., dissented from the judgment.

SUPREME COURT OF THE UNITED STATES

No. 05–27

NUINIK, PETITIONERS *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

[May 22, 2018]

JUSTICE KAGAN delivered the opinion of the Court.

In his petition submitted to the Court on March 21, 2018, Nuinik sought to appeal the District Court's decision in *United States* v. *Nuinik*, 3:18–9262 (USDC 2018).

I

On March 16, the United States brought charges against the petitioner, Nuinik, for one count of false arrest. Five days later, the petitioner was found guilty and sentenced to five days of being arrest-on-sight. Believing the District Court's ruling to be wrong, he appealed to this Court under the circumstances that the presiding judge had not complied with the defense's request to depose three witnesses.

II

The Fifth and Fourteenth Amendments to the Constitution articulate that all citizens of the United States are subject to due process under the law. "[O]ur cases establish, at a minimum, that criminal defendants have the right to the government's assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt." *Pennsylvania* v. *Ritchie*, 480 U. S. 39, 56 (1987).

Under this precedent, the Court must decide whether the District Court's decision to not hear the deposition of the petitioner's witnesses violated his due process rights. "There is a significant difference between the Compulsory Process Clause weapon and the other rights protected by the Sixth Amendment—its availability is dependent entirely on the defendant's initiative." *Taylor* v. *Illinois*, 484 U. S. 400, 410 (1988).

The defendant's right to compulsory process is itself designed to vindicate the principle that the "ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts." *United States* v. *Nixon*, 418 U. S. 683, 709 (1974).

A judge whose decision is based on a partial representation of the facts is neglecting his duty to carry out the rule of law. Furthermore, for a defendant's right to depose witnesses to aid his case to be infringed is a travesty and detriment to our judicial system.

* * *

We vacate the conviction and remand this case back to the District Court for a new trial.

It is so ordered.

JUSTICE SOUTER dissents from the judgment.

SUPREME COURT OF THE UNITED STATES

No. 05–27

NUINIK, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

[May 22, 2018]

JUSTICE BORK, concurring in part and dissenting in part.

In this case a jury convened by the United States District Court for the District of Nevada found Nuinik guilty of making a false arrest. See *United States* v. *Nuinik*, 3:18–9262 (USDC 2018). On that conviction, the District Court sentenced him to 5 days Arrest on Sight. The trial, Nuinik however argues, was rife with "negligen[ce]." Brief for Petitioner 2. According to Nuinik, the District Court replaced his original counsel who had provided clear notice of intended witness depositions with one who had no knowledge of his case. As a result, Nuinik says, the defense he received was incomplete. Nuinik's telling of events raises clear questions under the Compulsory Process Clause (which guarantees the right to call defense witnesses) and the Assistance of Counsel Clause (which guarantees the effective assistance of counsel). *E.g.*, *Pennsylvania* v. *Ritchie*, 480 U. S. 39, 56 (1987) ("Our cases establish, at a minimum, that criminal defendants have the right . . . to put before a jury evidence that might influence the determination of guilt"); *Strickland* v. *Washington*, 466 U. S. 668 (1984) (establishing the ineffective-assistance-of-counsel standard). The majority, without question, buys the version of events described by Nuinik. I, however, am not so sure—how can I be? In this case, there is no transcript or other documentation of the trial which would allow me to verify any of what Nuinik has alleged to be true. Of

course, that is not his fault: it is the duty of the District Court, not him, to maintain careful documentation of its proceedings. Nuinik should not be punished because the District Court failed to do so. Luckily, the law doesn't say he should be.

Congress passed the Court Proceedings Act to guard the People—to whom they are accountable—against Government invasions of their rights which previously would go unremedied because of an absence of documentation. As such, they declared that "[a]ll . . . cases shall be documented, and the documentation shall be publicly accessible on the case file." Court Proceedings Act, Pub. L. 57–3, Dec. 9, 2017 (hereinafter CPA), §3(a). When an appeals court comes across a case which lacks appropriate documentation, it "shall be deemed void." CPA, §4(a).

*

Congress laid out two forms of acceptable documentation. The first is a "recording" and the second is a "transcript." CPA, §3(b). Neither is present here.

Some of my colleagues are reluctant to invalidate Nuinik's conviction on CPA grounds because neither party raised them. The language of the CPA, however, is mandatory. See *Board of Pardons* v. *Allen*, 482 U. S. 369, 374 (1987) (explaining the "significan[ce of] mandatory language—the use of the word 'shall' "); *Greenholtz* v. *Inmates of the Nebraska Penal and Correctional Complex*, 442 U. S. 1, 11–12 (1987); *Lexecon Inc.* v. *Milberg Weiss Bershad Hynes & Lerach*, 523 U. S. 26, 35 (1998). When a statute uses the word "shall," it has been traditionally understood to impose a duty impervious to judicial discretion. *Anderson* v. *Yungkau*, 329 U. S. 482, 485 (1947). Accordingly, when a CPA violation is palpable, we must apply the remedy chosen by Congress—we must void the lower court decision.

Applying CPA to this case requires us to void Nuinik's

conviction. The majority does this but not on CPA grounds. Instead, the majority invalidates Nuinik's conviction on Compulsory Process Clause grounds. Doing so is inconsistent with our past cases which have uniformly recognized the need for restraint in addressing constitutional questions. We have said that "[t]he Court will not pass upon a constitutional question [even if] properly presented in the record, if there is also present some other ground upon which the case may be disposed of." *Ashwander* v. *TVA*, 297 U. S. 288, 347 (1936). Questions of "statutory construction or general law" are among those other grounds. *Ibid*. See also *Siler* v. *Louisville & Nashville R. Co.*, 213 U. S. 175, 191 (1909); *Light* v. *United States*, 220 U. S. 523, 538 (1911). The majority errs in basing its decision today on the Sixth Amendment when there are perfectly available statutory grounds (to wit: the CPA) which it could have used. Moreover, the CPA entitles Nuinik to greater relief than what the majority grants him under the Sixth Amendment because we do not know, in the case of a CPA violation—due to the trial court's conduct (or lack thereof)—whether or not a "bad faith" error occurred prohibiting retrial. *United States* v. *Dinitz*, 424 U. S. 600, 611 (1976). The CPA would give the benefit of that uncertainty to Nuinik. Accordingly, so would I.

*

I would reverse the judgment of the District Court.