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

KIRKMAN *v.* UNITED STATES, ET AL.

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

No. 05–63. Argued July 17, 2018—Decided August 3, 2018

Jacob Kirkman, the petitioner, was counsel for the defendant in *United States* v. *Manslaughter_Ian*, 3:18–2591 (D. C. 2018). Due to having no other technology available, he attended the trial on his cellphone. Due to an update to the ROBLOX mobile app, however, he disconnected many times. Ultimately, he stopped attempting to reconnect and notified the judge of his difficulty. He was held in contempt of court for obstructing the administration of justice. Kirkman appealed.

Held:

1. A person cannot be held in criminal contempt for involuntarily disconnecting from a trial due to technology issues outside of their control, including if they decide to use a cellular device. Pp. 1–8.

(a) Intent, outside of situations where a defendant acted in a contemptuous manner so far outside the scope of appropriate behavior, is a requirement for criminal contempts. Pp. 1–3.

(i) *McComb* v. *Jacksonville Paper Co.*, 336 U. S. 187, 191 (1949), suggested that some level of willful contempt is required in criminal contempts. Criminal contempt is a crime in the ordinary sense so the common-law requirement of intent automatically attaches. Pp. 2–3.

(ii) The requirement of intent, at least, means a person cannot be liable for criminal contempt due to things outside of their control. P. 3.

(b) Technology issues, in particular issues arising from the ROBLOX software, are beyond a person's control. The fact that ROBLOX provides access to its platform via a cellular device removes the possibility that a person may be punished simply for choosing to use that type of device, unless they clearly intended to cause an obstruction. Pp. 3–6.

Syllabus

2. Federal Rule of Criminal Procedure 42 requires that criminal contempts be certified with a full accounting of the facts and grounds for their issuance.

3:18–fGcIcPlq, reversed.

ROBERTS, J., delivered the opinion of the Court, in which HOLMES, C. J., and MARSHALL, GORSUCH, BORK, O'CONNOR, KAGAN, and STEWART, JJ., joined. WHITE, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 05–63

DORKJACOB AKA JACOB KIRKMAN, PETITIONER *v.* UNITED STATES, ET AL.

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

[August 3, 2018]

JUSTICE ROBERTS delivered the opinion of the Court.

Under 18 U. S. C. §401(1), judges are empowered to punish individuals in their vicinity for misbehavior that "obstruct[s] the administration of justice." Under this backdrop, petitioner was cited with contempt after leaving midway through his trial. We are called upon to decide whether, under §401(1), an individual can be cited for his technology breaking down mid-trial.

I

This case may at first glance seem odd, but at its core is an important and relevant issue. Petitioner, Jacob Kirkman, represented a defendant as a court-appointed attorney in the trial of *United States* v. *Manslaughter_Ian*, 3:18–2591 (D. C. 2018). On June 12, 2018, the parties went to trial. The judge ordered that the trial be held in game rather than on discord; Kirkman therefore attended to the best of his ability—this time, on a phone.[1] In the middle of

[1] In addition to desktop- and laptop-based computers, individuals are able to now play ROBLOX on phones, tablets, and gaming modules (*e.g.* the popular "X-BOX 1").

the trial, Kirkman began to disconnect. He attempted to rejoin, but his efforts proved fruitless; his phone ended up disconnecting three times. So he left. After warning the judge that his "phone keeps crashing," Pet. for Cert. 3, App. A, he was cited with contempt. The citation was due to last for seven days. Kirkman filed a petition for certiorari to contest the validity of the citation. We granted certiorari and stayed the citation. 5 U. S. ___ (2018).

II

Contempt of court is criminal where the citation issued is penal and to "ensure the authority of the court," *Seaborn* v. *Lukassie*, 4 U. S. 5, 8 (2018); it is civil where the end goal is to coerce compliance with a court's order or authority. *Ibid.* Neither of the parties before us contends that the contempt is civil. We therefore must resolve whether, given that before us is a criminal contempt citation, petitioner obstructed the administration of justice—the required action for criminal contempt under 18 U. S. C. §401(1). Petitioner argues that he could not possibly have obstructed justice; the statute requires that "misbehavior," *ibid.*, accompany the obstruction of the administration of justice. In contrast, respondent, the United States, rebuttals with a stricter standard: The petitioner knew the risks of using a phone to play ROBLOX games, and, therefore, his phone's crashing is the dispositive element here. The United States' argument rests on the assumption that intent, plainly, does not matter as it relates to contemptuous acts. But we have suggested before that some level of willful contempt is required in criminal contempts. See *McComb* v. *Jacksonville Paper Co.*, 336 U. S. 187, 191 (1949).

Our ruling in *McComb* distinguished the requirement of intent in criminal contempts from civil ones. Because civil contempt, as opposed to criminal contempt, is a "sanction to enforce compliance with an order of the court or to compen-

sate for losses or damages sustained by reason of noncompliance," *ibid.* (citing *United States* v. *United Mine Workers*, 330 U. S. 258, 303–304 (1947); *Penfield Co.* v. *Securities & Exchange Commission*, 330 U. S. 585, 590 (1947)), the intent with which a defendant carried in committing the act is unrequired. But criminal contempt is a "crime in the ordinary sense," *Bloom* v. *Illinois*, 391 U. S. 194, 201 (1968). The common-law requirement of intent, therefore, attaches itself to criminally contemptuous acts. See generally *Morissette* v. *United States*, 342 U. S. 246, 250–252 (footnotes omitted) (emphasis added) ("The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.").[2]

We therefore hold and strengthen the intimation in *McComb* that intent, outside of situations where a defendant acted in a contemptuous manner so far outside of the scope of appropriate behavior, is a requirement for criminal contempts.

III

We now must decide whether Kirkman's actions fell into the latter category—where the action is so stark and negligent that intent is not obligatory. At the outset, it is important to note that the issues of technology in our virtual world are well recognized. On computers, a wide array of

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[2] The United States objects. At oral argument, the Solicitor General posited a different mode of analysis. Rather than relying on the intent of the defendant, this Court should look to the level of blameworthiness involved. Thus, regardless of intent, so long as an action could reasonably be blamed on a defendant, a criminal contempt citation should be upheld. See Tr. of Oral Arg. 3–4, 6. This reading, however, would eviscerate the line between reasonable accidents and unreasonable negligence. We prefer a standard that protects an individual from being punished for issues outside of his control.

issues can cause a "system shut down." Corrupted files, malicious software (or "viruses," as they are more commonly known), unavailable "memory" (*e.g.*, "RAM" or "Random Access Memory"), and overheating are just some of the situations that cause crashes. And phones and tablets only add to the complications of our technology. Add wireless-connection problems and a user could face any number of problems outside of his control.

In this case Kirkman used a phone to attend his trial. On other platforms, like social-media applications or other "mobile games," Kirkman's phone worked for him without delay.[3] But with ROBLOX's new update for their mobile platforms, he ran into trouble. His phone crashed. And it crashed some more—all during trial. We cannot know the true reason for the crashes; but we can say with reasonable certainty that the disconnecting was outside of his control.[4]

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[3] JUSTICE WHITE contends that the petitioner's device has failed him before. *Post*, at 1. From this, he concludes the petitioner "kn[ew] that he would disconnect . . . [because] . . . it happened before." *Post*, at 2. But nothing in the record supports JUSTICE WHITE's colorful narration. Indeed, at oral argument, the United States made no charge that Kirkman disconnected multiple times in a prior trial; and Kirkman affirmed that he never experienced multiple disconnections until during the case before us. Tr. of Oral Arg. 17–18.

JUSTICE WHITE uses this innovative retelling of the facts below to argue that Kirkman therefore had the intent to obstruct the administration of justice. Yet even if this were true it would change none of our analysis. JUSTICE WHITE's solution comprises a short list of actions *he* believes the petitioner could have taken to mitigate the possibility of contempt. Assuming his fiction to be truth, JUSTICE WHITE admonishes the petitioner for either not rejecting the case or refusing to schedule the trial on the district court's terms. *Post*, at 2. We find this difficult to understand, as one wonders why JUSTICE WHITE's solution for his understanding of the contempt citation's validity would involve an actually contemptuous act.

[4] JUSTICE WHITE, much like the United States, disregards the fact that the so-called conduct for which petitioner was punished was outside of his control. He would instead ascertain whether the petitioner could reasonably be blamed. *Post*, at 2. Notwithstanding that there is nothing in the record supporting the notion that the petitioner *could have foreseen*

The United States suggests that the petitioner should have known that his phone was unstable. The record, however, does not support that argument. Petitioner's phone worked for him on ROBLOX prior to an update, and it has worked for him with other uses without delay. We accordingly do not accept an argument that, in plainspoken terms, says he "should have known."[5] Adding to the matter

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his phone breaking down, *infra*, at 6, n. 5, JUSTICE WHITE misunderstands when that standard controls. He cites *Offutt* v. *United States*, 232 F. 3d 69 (1956), but misapplies its contents entirely. *Offutt* concerned whether a defendant was appropriately held in criminal contempt for uttering "insolent, insulting, and offensive" remarks at the court during a trial. *Id.*, at 71. The court there considered whether the defendant's actions constituted a "gross discourtesy." *Ibid.*

The *Offutt* court distinguished between contempt situations where clear intent is required and where an action committed is so violative that the intent is inherent in the conduct itself. *Id.*, at 72 ("It may be true that a finding of *contumacious* intent is not always a prerequisite to a contempt conviction under 18 U. S. C. §401(1); absence of such intent may go only to mitigation.") (citation omitted). This was explained by showing that one could not be cited with criminal contempt for asking incompetent questions without intent, but one could be cited for "gross discourtesy." *Id.*, at 72.

There are, therefore, two points to address. First, the *Offutt* court concerned whether a willful action by the defendant there—the utterance of offensive and inappropriate comments—constituted contempt. It thus hinged around actions committed by the individual—not actions outside of his control. Second, it found that the willful action was so grossly outside of decorum that it satisfied criminal contempt. To the first, we know that the petitioner here did not disconnect from the trial; his phone did. The action, therefore, could not be "clearly blameworthy," *ibid.* To the second, we reject a reading and application of 18 U. S. C. §401(1) that would, in effect, place technological disruptions in the same category of shouting obscenities at a judge mid-trial. To accept it would be to endorse "an absurd . . . result." *United States* v. *TPR*, 5 U. S. 30, 42 (2018) (Thomas, J., dissenting) (quoting *United States* v. *X-Citement Video*, 513 U. S. 64, 82 (1994)).

[5] In his dissent, JUSTICE WHITE turns from arguing that the petitioner somehow should have predicted the future of his device's stability—without any reasoning or evidence to suggest this would even be possible—to

is the fact that petitioner's only device available to him at the time of the trial was his phone. He does not own a computer. Tr. of Oral Arg. 18. The United States in response argues, in quite brazen terms, that the petitioner should simply "stop practicing law" because he does not have a computer. *Id.*, at 9. We reject this argument for two reasons. First, there has never in our history been a requirement that one use a computer to advocate in the legal profession. To say so would be arbitrary and restrictive. Second, we are not in the business of punishing individuals for using platforms that ROBLOX as a company allows. In many ways ROBLOX requires things that run counter to our Constitution and laws. One comes to mind rather easily: An individual can be banned from the game itself for speech ROBLOX's terms of use find offensive. Our Constitution protects that speech, but ROBLOX does not. Because ROBLOX has made its game accessible to mediums other than the computer, we dismiss the approach of tacitly proscribing those same mediums.

IV

There remains one more issue to address—albeit briefly. Under Rule 42 of the Federal Rules of Criminal Procedure, judges when summarily issuing contempt must adequately

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assuming *arguendo* that the petitioner "conscious[ly], willful[y] and intentional[ly]" committed contempt against the court. *Post*, at 2. We do not know from where JUSTICE WHITE found this conclusion, but it certainly is not in accord with the law. Because criminal contempt is a crime, and because intent is required, the question of intent turns on the actual willfulness of the actor, not whether an action could be attributed to him in the strictest of the sense. That is so because while "it is not unusual to punish individuals for the unintended consequences of their *unlawful* acts," it is absolutely "unusual to impose criminal punishment for the consequences of purely accidental conduct." *Dean* v. *United States*, 556 U. S. 568, 575 (2009). Here, it can hardly be argued that the petitioner's phone glitching was an "unlawful ac[t]," *ibid.* (emphasis deleted), in and of itself.

certify with the court the contemptuous conduct. Here, nothing of the sort was accomplished. The order simply says that Kirkman left and "disrupt[ed] trial." We find this explanation to be incompatible with the requirements of Rule 42. It cannot be gainsaid that such a certification is one that inadequately "recite[s] the facts," Fed. Rule Crim. Proc. 42(b). Contempts, especially summary contempts, must be justified; the certification process serves an important goal: It ensures that individuals are given requisite information as to the justification for their punishment.

Given this, we further hold that contempt orders must be certified with a full accounting of the facts and grounds for their issuance. Without such due diligence, the risk of arbitrary and abusive contempts would remain capacious.[6]

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[6] In an emotive crying out, JUSTICE WHITE lectures us for considering the procedural question. Invoking grandiose themes of the need for judicial restraint and respecting "the *People*," *post*, at 3 (emphasis present), Justice White claims that the addressing of the procedural faults in this case is inappropriate because they have apparently "not been posed to the Court." *Ibid.* A brief study of the record, however, shatters that creative fiction. During oral argument, JUSTICE STEWART asked the petitioner whether the district court below certified the citation. The petitioner argued that he did not do so adequately, and therefore violated 28 U. S. C. §636(e)(2) ("The order of contempt *shall* be issued under the Federal Rules of Criminal Procedure." (emphasis added)). Kirkman's assertion, of a fault in the procedure, "raises [a] clear questio[n]" for us to answer; and because §636(e)(2), in tandem with Rule 42(b), employs compulsive language, a "duty impervious to judicial discretion" has been imposed. *Nuinik* v. *United States*, 5 U. S. ___, ___ (2018) (BORK, J., concurring) (slip op., at 2) (citing *Anderson* v. *Yungkau*, 329 U. S. 482, 485 (1947)). See *Lexecon Inc.* v. *Milberg Weiss Bershad Hynes & Lerach*, 523 U. S. 26, 35 (1998). When reading the statutory authority of the federal contempt power in its entirety, we are required to "give effect to . . . plain command[s]." See *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469, 476 (1992).

A fortiori, our analysis of the procedural question is neither a "self-servin[g] pursu[it]" of our own interests, *post*, at 3, nor a "spit[ting] in the face of . . . judicial independence," *ibid.*, but rather the carrying out of judicial due diligence.

* * *

Our holding today will indirectly impose new challenges on courts when confronting technological issues. Our holding, however, leaves unaltered the power of judges to sanction derisive individuals. Nor does it change the framework of the contempt power more broadly. We simply affirm that the power of contempt does not extend to actions by defendants that were entirely outside of their control. Accordingly, the judgment of the District Court of Nevada is

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 05–63

DORKJACOB AKA JACOB KIRKMAN, APPELLANT *v.* UNITED STATES, ET AL.

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

[August 3, 2018]

JUSTICE WHITE, dissenting.

While I write in dissent, I also, briefly, write to express agreement with the majority on the question: We must, indeed, decide whether the District Court's contempt issuance in *United States* v. *Manslaughter_Ian,* 3:18–2591 (D. C. 2018) was in alignment with 18 U. S. C. §401. And my answer to that question is yes; the District Court's issuance of contempt in *Manslaughter was* in accordance with §401.

I

What the majority *doesn't* acknowledge is the trial of *United States* v. *Ryphen*, 3:18–9161 (D. C. 2018). In such case the appellant served as counsel for the defense. And it's important to note that the trial was convened "before" the trial of *Manslaughter_Ian*. See Tr. of Oral Arg. 19. This is a vital part of the case because appellant, when trying *Ryphen*, operated from a cellular device—just as he did in the case being appealed before us. And during that trial, he disconnected multiple times, which ultimately forced him to leave—just as it occurred in the case being appealed before us.

And because the *Ryphen* trial was completed well before the case that is now being appealed to us, appellant—because he experienced it in *Ryphen*—knew, prior to the trial in question, of the adverse effects that trying a case from a

cellular device would have. So, accordingly, one must ask himself: Why would he try a case from a cellular device a second time (in *Manslaughter*), when it went horribly the first time? The simple answer is that appellant did not care; he couldn't have. Because if he did, he either would have (a) rejected the case (which would have been the responsible thing to do if he did not have access to a stable device) or (b) simply not agreed to the scheduling of the trial and requested a later date in which he *would* have access to a stable device. But he did not do either of those things, instead choosing to partake in the scheduling of the trial (knowing that he would not have access to a stable device) and subsequently decided to attend trial (knowing that he would disconnect—because, again, he experienced it before).

Appellant's conscious, willful, and intentional decision not to warn the judge *prior* to trial of the complications that would present itself during trial and to attend trial on his cellular device (knowing what would happen) caused a mistrial, and thus the obstruction of the administration of justice.

Now, with all of those willful (and albeit negligent) decisions made by appellant in mind, how could it possibly be that he did not obstruct the administration of justice in accordance with § 401? For his conduct, as asserted in *Offutt* v. *United States*, 232 F. 2d 69, 72 (D. C. Cir. 1956), was "clearly blameworthy."

II

I concede on the front that we do not have a blanket mandate for the usage of computers. But there is a consensus—which I doubt that the majority would deny—that one must have the tools prudent to the effective execution of his duties at his disposal—especially if you're an attorney. In this case, appellant didn't. And because he was, knowingly, unprepared—without the necessary tools to effectively serve

as defense counsel—in the appealed case, he is directly responsible for the blatant hindrance of the administration of justice.

III

Lastly, I write further to express concern about the majority's decision to hold that the District Court's contempt citation "inadequately recite[d] the facts." *Ante*, at 5. See also Fed. Rule Crim. Proc. 42(b). Now, not only do I disagree with the holding, but I also think that it's inappropriate for this Court to answer to the adequacy of the certification. For if the question has not been posed to the Court, it ought not be answered. And the question of adequacy of certification has *not* been posed to this Court, yet it has been answered. Such decision by the majority—as I see it—is a sheer product of judicial overreach.

Members of this Court must remember that we are here to adjudicate the *People's* "cases" and "controversies," not our own. See U. S. Const. Art. III, §2, cl. 1. One of the bedrocks of the judiciary is that judges are not political actors; we don't decide to answer questions that *we* believe to be present, simply because the question is compelling. Instead, the *People* come before the Court, and the Court remedies *their* legal questions, disputes or controversies; the Court doesn't self-servingly pursue its own interests by answering questions of its own. At least, that's what the Founders intended for the Judiciary. But that seems not to matter to the majority because, today, it has decided to spit in the face of the judicial independence that I speak of, by deciding to answer an irrelevant, non-petitioned question.

For those reasons, I dissent in the Court's decision today.