SUPREME COURT OF THE UNITED STATES

MAMAGOBIES *v.* UNITED STATES ET AL.

ON PETITION FOR WRIT OF REVIEW TO THE UNITED STATES GOVERNMENT, PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, AND APPLICATIONS FOR STAY

Nos. 09–53, 09A502 and 09A531. Decided July 14, 2020

The petition for a writ of review and motion to set the petition for a writ of mandamus for briefing and argument in No. 09–53 are granted. The second application for a stay in No. 09–50 is granted. The ethics complaint proceedings in the Court of Appeals for the Federal Circuit are stayed pending final disposition of No. 09–50. The application for a stay in No. 09–53 is granted in part and denied in part. The judgment of the Court of Appeals for the Federal Circuit in *Jackcari* v. *United States Dist. Court*, No. 08–01 (CAFC 2020), is stayed pending disposition of No. 09–53, but the application for a stay is denied in all other respects.

JUSTICE BORK, with whom JUSTICE KAGAN joins, concurring.

I concur in all of the Court's above actions. I write separately to address some of the finer points of these orders.

I

These cases arise because for the past several days the newly returned court of appeals and the district court have been locked in a heated confrontation over the scope of their respective powers. Over the course of this confrontation, the two have fought to gain a leg up on one another by any means necessary. The dispute began when the district court's clerk banned a circuit judge from the district court's discord server for an "inflammatory racial statement."[1]

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[1]Brief for Petitioner 1.

In response, the court of appeals issued a *sua sponte* order directing the district court to revoke the administrative powers of its clerk, the petitioner. The court of appeals didn't cite any statute or constitutional provision to back this order. The order rested entirely on the Judicial Restructuring Act's grant of jurisdiction to the court of appeals to conduct "administrative oversight" of the district court.[2]

When the district court refused to comply with that order, arguing its complete invalidity, the court of appeals held the then-chief district judge AlexJCabot and the petitioner in contempt of court. This Court then stayed the court of appeals' order and the related contempt citations pending our resolution of the dispute.[3]

After that, the district court decided to change its local rules to give additional power to its clerk. The rule change allowed the clerk more muscular administrative powers in the district court discord server and authorized them to also take on some case reassignment duties—traditionally the job of the chief district judge. The new chief district judge, Jackcari, didn't take very kindly to either move. He immediately filed a petition in the court of appeals asking for "administrative oversight" overturning the rule changes. Again, this plea for "administrative oversight" didn't aver that its position was correct as a matter of law. It instead claimed, regarding the grant of case reassignment power, that the district court had "usurp[ed] the authority of the Chief Judge with regards to the administration" of the district court.[4] And regarding the elevated administrative powers, the chief district judge wrote: the district court had "unilaterally give[n] the Clerk of the Court administrative powers not allotted by the Chief Judge."[5]

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[2]JRA, Pub. L. No. 80–13, §2(c).

[3]9 U. S. ___.

[4]Petition for Writ of Prohibition in No. 08–01 5 (CAFC 2020).

[5]*Ibid*.

For these "reasons," the chief district judge continued, the court of appeals should intervene. And intervene it did. The court of appeals quickly issued a stay temporarily blocking the rule change from taking effect—again, without any legal justification for that move anywhere in its record.

Along with that decision, the court of appeals also docketed an ethics complaint against the petitioner. It summoned the petitioner to respond and based its jurisdiction once again on the JRA's grant of "administrative oversight" jurisdiction.

In this order, we agree to take up a challenge to the court of appeals decision striking down the district court's rule change, stay the appeals court's ruling, and stay the ethics complaint proceedings against the petitioner.

II

I'll hold off on sharing too many of my views at this stage, but I want to address two things which relate to our actions above and which influenced my vote.

A

The appeals court's approach to "administrative oversight" raises serious concerns under Article III. Not just because, as the petitioner argues, they raise legitimate concerns under our opinion in *Benda*,[6] but also in light of their inherent tension with the basic rules of standing.

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First, the *Benda* problems: (a) it is probably unjust for a court to impose punishment on a person without providing them even the courtesy of an explanation and (b) it's not rational to deny the district court the right to control its

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[6] *Benda* v. *United States*, 6 U. S. 24, 38, establishes that any "la[w] affecting the Judiciary" must "be consistent with basic principles of justice . . . [and] rationally justifiable under the circumstances" to pass constitutional muster. This doesn't just apply to laws on their face, but also in their specific applications.

day-by-day internal governance without a good reason.[7]

To start, as I've explained before, a written opinion serves a valuable purpose in our judicial system. Written opinions convey "the full explanation [a] court has elected to offer for its legal conclusions, including the process going into its interpretation of a statute."[8] Judicial opinions "rationaliz[e] issues, explai[n] facts, and settl[e] disputes."[9] The point of an opinion is to "make a judgment credible to a diverse audience of readers."[10] "Context dictates the appropriate scope of the explanation."[11]

When punishment is imposed, context would seem to compel an explanation of at least *some* scope. Punishment was imposed here but not with any explanation. The appeals court's order called for the removal of the petitioner's administrative powers. That's punishment. But the appeals court's only explanation was to say that the petitioner had banned one of their fellow circuit judges from the district court server. That doesn't explain why that was wrong or by what standard. I won't say yet whether this is enough to fail *Benda*, but it's definitely concerning.

For my second point, the district court's right to control its day-by-day governance isn't something that should be lightly interfered with. District judges "are most familiar

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[7]By this, I mean that while it's appropriate for general rules of district court administration to be laid down by, for example, this Court or THE CHIEF JUSTICE, the district court should be left the freedom to as necessary fill up the details and implement those rules on a day-by-day basis. That freedom shouldn't be obliterated by overweening "administrative overseers." District judges are most familiar with the operation of the district court and are best qualified to provide for its day-by-day administration.

[8]*Hudson* v. *House of Representatives*, 7 U. S. ___, slip op. 2 (BORK, J., concurring).

[9]Curtin, Opinion Writing, 21 Georgetown J. L. E. 237, 237–38 (2008).

[10]Stevenson, Writing Effective Opinions, 59 Judicature 134, 134 (1975).

[11]*Hudson*, *supra*.

with the operation of the district court and are best qualified to provide for its day-by-day administration."[12] In the absence of upper court intervention, they have the freedom to "as necessary fill up the details and implement" the administrative rules prescribed by this Court and THE CHIEF JUSTICE. It's irrational to interfere with this freedom without a good justification.[13]

I haven't seen a good justification in the record for the appeals court's actions in these cases so far and I'm not sure there is one. I'll have to wait and see.

2

The appeals court's approach to "administrative oversight" cases also appears suspect under the traditional rules of Article III standing.

To start, federal courts may only exercise the "judicial power" within the four corners of an "Article III case or controversy."[14] When the appeals court uses its "administrative oversight" jurisdiction to order specific actions, it is undoubtedly exercising the "judicial power."[15] It doesn't change anything that "administrative oversight" was spelled out by Congress. A lower court usually requires both constitutional and statutory jurisdiction to decide a case. The JRA's grant of "administrative oversight" provides the appeals court statutory jurisdiction but that "in-

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[12] *Supra*, n. 7.

[13] A wise Justice explained it this way: "Chief Judge Hudson just stated that the 'Administrative powers Button is on his desk at all times.' Will someone from his depleted and food starved regime please inform him that I too have an Administrative powers Button, but it is a much bigger & more powerful one than his, and my Button works!"

[14] *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 574.

[15] See *Georgia* v. *Stanton*, 73 U. S. 50, 75–76 (explaining that a "compulsory remedy" can only be issued through an "exercise of judicial power.").

vitation of Congress" doesn't override the need for coextensive constitutional jurisdiction.[16] Thus, the court of appeals requires an Article III case or controversy to constitutionally exercise its statutory jurisdiction to carry out "administrative oversight" when the intended end result is a compulsory remedy.[17]

An essential element of any Article III case or controversy is the rule of standing. To establish standing, a plaintiff or petitioner must "(1) ha[ve] suffered an injury in fact, (2) [that is] fairly traceable to the challenged conduct, and (3) . . . would likely [be] redress[ed]" by a "favorable judgment."[18]

An injury in fact has two parts: damage and injury. The first part ("damage") is synonymous with factual harm. It just basically means that "a bad thing" with "tangible impact" has happened to you.[19] The second part ("injury") requires more. To satisfy it, you have to show that the damage you suffered was the *result* of an injury to your legal interests. At the founding, "factual harm without a legal injury was *damnum absque injuria* and provided no basis for relief" or standing.[20] So for a party—and there must at least be a party—invoking the appeals court's "administrative oversight" jurisdiction to have standing to win a compulsory remedy, they need to show both that they were harmed by whatever thing they're challenging or going to the court of appeals to have corrected *and* that whatever it was touched on one of their legal interests.

So, a generalized claim about how things should work

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[16] *Lujan*, *supra*, at 576.

[17] Only special powers directly granted by the Constitution, like anytime review for example, are exempt from the case or controversy requirement.

[18] *Tools* v. *United States*, 9 U. S. ___, slip op. 3 (BORK, J., dissenting).

[19] *Ibid.*

[20] Woolhandler & Nelson, Does History Defeat Standing Doctrine? 102 Mich. L. Rev. 689, 722–723.

isn't enough to invoke "administrative oversight."

Some extra food for thought: gross departures from administrative rules imposed by this Court or THE CHIEF JUSTICE can be remedied through regular appeals or petitions for mandamus by parties in specific cases where those rules were not followed or by the operation of those rules themselves. The parties should probably address why an additional layer of "administrative oversight" initiated by a third party would be warranted or not.

B

Onto the second "big thing" I wanted to address here. In objecting to the second requested stay in No. 09–50, Chief Judge Hudson of the court of appeals contended that the ethics complaint proceedings and our pending disposition of No. 09–50 were unrelated. He suggested that, contrary to the statement of his colleague Judge Chen, the appeals court's jurisdiction to hear ethics complaints regarding the conduct of lower court staff, as opposed to judges, was not based on "administrative oversight" but some other vaguely defined power.

I won't speak to the merits of this dispute now, but I think the two cases are related for the completely different reason that the ethics complaint challenges the petitioner's noncompliance with the order under review (and stayed) in No. 09–50. A pause on those proceedings is both necessary and appropriate.

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I concur.