

NO. _____

In the Supreme Court of the United States

MUFASA WILSON SEJOUR
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

In today's world, there is no such thing as a purely local business. All businesses use credit card machines, access the internet, and purchase out-of-state goods. That does not mean that every robbery affects interstate commerce.

The facts of this case involve an 18-year old with no prior convictions who robbed a local gas station for \$200. The Eleventh Circuit determined that the robbery affected interstate commerce and could be prosecuted federally under the Hobbs Act because the gasoline and beer at the gas station originated from out of state.

The question presented here is whether a robbery of a local gas station involving \$200 is covered by the federal Hobbs Act simply because the store received its gasoline and beer from out of state.

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PETITION FOR WRIT OF CERTIORARI

Mufasa Wilson Sejour respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in the matter of *United States v. Mufasa Wilson Sejour* (Case Number 18-11571, December 10, 2018), which affirmed the judgment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The decision of the court of appeals was entered on December 10, 2018. This petition is timely filed pursuant to Sup. Ct. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide

that courts of appeals shall have jurisdiction over all final decisions of United States district courts.

CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS INVOLVED

Petitioner relies upon the following constitutional provisions, treaties, statutes, rules, ordinances and regulations:

The Hobbs Act, 18 U.S.C. § 1951, provides in relevant part:

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery, ... shall be fined under this title or imprisoned not more than twenty years, or both.

STATEMENT OF THE CASE

This case involves the most unlikely of federal defendants: a teenager caught stealing \$200 from a gas station. Not even a repeat offender, this 18-year-old with no priors was brought over from state court, tried in federal court under the Hobbs Act, and sentenced to 84 months in federal prison. Without a single aggravating circumstance, the Eleventh Circuit agreed to turn the most quintessentially simple, run-of-the-mill state court robbery into a federal crime.

Admittedly, there is a low bar for proving that a robbery affected interstate commerce, but there is still a bar. Simply put, there is no previous case in this Court or any other that presents such purely local facts. In finding that this case meets the federal nexus requirement and affirming Sejour's conviction, the Eleventh Circuit shifted the standard from minimal to non-existent. This decision should be rejected.

Indictment and Trial

Petitioner Mufasa Wilson Sejour initially was charged in state court with armed robbery based on the same conduct. *See* PSI par. 26, *State v. Sejour*, F17-13008 (Miami Dade Circuit Court, July 1, 2017). But for unknown reasons (there were no aggravating factors – no priors, no injuries, and so on), the case was brought over to federal court. In a Second Superseding Indictment (“the Indictment”) filed on January 9, 2018, Sejour was charged in the United States District Court for the Southern District of Florida with the following two counts: (1) Hobbs Act Robbery under 18 U.S.C. § 1951(a); and (2) Brandishing a Firearm in Furtherance of a Crime of Violence under 18 U.S.C. § 924(c)(1)(A)(ii). In support of Count One, the Indictment states:

[T]he defendant did take the United States currency and other property from the person and in the presence of a person employed by U-Gas, located at 10 Northeast 167 Street, North Miami Beach, Florida 33169, a business and

company operating in interstate and foreign commerce, against the will of that person, by means of actual and threatened force, violence, and fear of injury to that person, in violation of Title 18 United States Code, Section 1951(a).

Doc. 33, at 1-2.

Trial before District Judge Paul C. Huck began on January 16, 2018, and lasted two days. At trial, the Government presented evidence that on June 30, 2017, a masked man came into a U-Gas gas station located in Miami. He was dressed in black and took approximately \$200 from the cash register, mostly in fives and ones. Doc. 51 at 116-117 (Shimu testimony). The money was later recovered. *Id.* at 206 (testimony of Guillermo Besonias). The FBI did not initially investigate the case. Doc. 51 at 106.

Behind the counter at the time of the robbery was Alual Shimu, a friend of the person who ran the gas station. *Id.* at 115; see *id.* at 138-39 (testimony of Syed Udin). Mr. Shimu was not a store employee. *Id.* He testified that when the man came to the counter, Mr. Shimu opened the register, took out the money that was inside, and dropped it on the counter. *Id.* at 117. Mr. Shimu further testified that the man then “took the money, and with the gun he went, he opened the door, and he left.” *Id.* Mr. Shimu went on to state that “[a]fter the robbery, two or three guys came to buy something. Then I told them there is some robbery and you cannot buy anything until and unless the police,

law enforcement, they are coming. But they left.” *Id.* at 118; *see also id.* at 133 (“They came, two or three guys did come, and when I told them, they went.”); *id.* at 136 (“I said I cannot sell anything because of the robbery.”).

The person who ran the gas station, Mr. Udin, was not at the store during the robbery. He testified that on the night of June 30, 2017, he was heading to the gas station and saw a man in black wearing a mask “getting in the station, the front door of the inside business.” *Id.* at 141. When he saw the man, he “didn’t stop in my station” but instead headed to a gas station across the street where he called 911. *Id.*

Mr. Udin further testified that the store was closed for approximately one hour after the robbery to enable the police to conduct an investigation. *Id.* at 162, 170. In response to the prosecutor’s question, “Did you lose business during this time,” Mr. Udin stated, “Yes.” *Id.* at 170. Mr. Udin further testified that “beside the gas, we have all the grocery, like grocery and drinks, beverage, beverage like beer, soft drink, water, beers. Everything.” *Id.* at 140; *see also id.* (“We have imported beer. We have the local beer too.”). He also testified that the gas station accepts credit cards. *Id.*

In closing arguments, the Government summarized the evidence regarding the robbery’s effect on interstate commerce as follows:

Finally, the third element is that the defendant's actions obstructed, delayed or affected interstate commerce. And what that means, ladies and gentlemen, is that it affected the flow of business activity from one state to another. If you will remember back to Mr. Udin's, the owner of the UGas station, testimony, he told you about UGas and how it operates. It's a gas station. It receives that gas from out of state. It sells products that it receives from out of state and from out of the country, and it accepts credit cards that are international credit cards—American Express, Mastercard—things that all tie into those concept of interstate commerce, the flow from one state to another. You also heard Mr. Udin testify that as a result of this robbery that the defendant committed he lost business.

Doc. 52 at 269-270. On January 17, 2018, the jury found Sejour was found guilty on both counts. PSI, Doc. 54, at 4.

Sentencing

Sejour's Total Offense Level under the Federal Sentencing Guidelines was 20. He had zero criminal history points, for a criminal history category of I. *Id.* at 7. As to Count One, the term of imprisonment was 0 to 20 years. 18 U.S.C. § 1951(a). As to Count Two,

the minimum term of imprisonment was not less than seven years, to run consecutively. § 924(c)(1)(A)(ii) and (D)(ii). PSI, Doc. 54, at 12.

On March 29, 2018, Sejour was sentenced to a term of imprisonment of 84 months on Count Two, and one day on Count One, to run consecutive with each other. Doc. 60 at 2.

Appeal

Sejour timely filed his appeal on June 4, 2018. On December 10, 2018, the Eleventh Circuit issued its opinion denying his appeal. A-1. The court found that based on the evidence that Sejour “took \$200 from a gas station” that “sold products originating from outside Florida” and “accepted credit cards,” and that the gas station “closed for about an hour because of the robbery,” a jury could find beyond a reasonable doubt that Sejour’s conduct “had at least a minimal effect on interstate commerce.” *Id.* at A-4.

REASONS FOR GRANTING THE WRIT

If there is to be any outer limit to the reach of the Commerce Clause, this case must fall beyond that limit. Sejour’s conviction is based on purely local activity with no effect on interstate commerce. Because the Eleventh Circuit’s view of the Hobbs Act reflects no reasonable limits on Congress’s jurisdiction to regulate state law robbery, the decision is unconstitutional and must be reversed.

For many years the Courts of Appeals have taken an overly expansive view of the interstate commerce provision of the Hobbs Act and have allowed local prosecutions to be federalized. This conclusion that *any* link to interstate commerce, no matter how small, is sufficient is not correct. In fact, in its latest pronouncement on the issue, this Court was careful not to make such a sweeping generalization. *Taylor v. United States*, 136 S. Ct. 2074, 2081 (2016). In *Taylor*, this Court made clear that the interstate commerce element of the Hobbs Act functions to ensure that Congress does not exceed its authority under the Commerce Clause by encroaching on the police power of the States. *Id.* The Court found that a local robbery of a drug dealer affected interstate commerce because, under *Gonzales v. Raich*, 545 U.S. 1 (2005), “the market for marijuana, including interstate aspects, is commerce over which the United States has jurisdiction.” *Id.* at 2080 (quotation omitted). As a result, the Court concluded that in cases involving robbery of drug dealers, “the Government need not show that the drugs that a defendant stole or attempted to steal either traveled or were destined across state lines.” *Id.* at 2081.

Importantly, however, this Court underscored that “[o]ur holding today is limited to cases in which the defendant targets drug dealers for the purpose of stealing drugs or drug proceeds.” *Id.* at 2082. The majority also was careful to emphasize that “[w]e do not resolve what the government must prove to establish Hobbs Act robbery where some other type of victim is targeted.” *Id.* Because the instant case

involves “some other type of victim” than a drug dealer, there is no presumption under *Taylor* that the Hobbs Act applies. Certiorari should be granted to determine the reach of the Hobbs Act, and to resolve the important question left open by *Taylor* of what the Government must prove to establish the interstate commerce element in cases that do not involve the robbery of drug dealers.

In Sejour’s case, the evidence the Government presented at trial amounted to a depiction of an everyday local gas station in America, i.e., it sold gasoline, imported beer, and took credit cards. There was no employee in the gas station at the time of the robbery, which occurred in the middle of the night, and no customers. Approximately \$200 was taken, and it was later recovered. The local police investigation lasted about an hour (no federal law enforcement was involved in the investigation), and only two or three customers were turned away as a result of the incident.

It is hard to imagine a more local case. Because the Eleventh Circuit’s view of the Hobbs Act in this case reflects no reasonable limits on Congress’s jurisdiction to regulate state law robbery, it is unconstitutional, and must be rejected. The Eleventh Circuit’s view of the Commerce Clause is that any robbery counts. We are asking this Court to grant certiorari to examine whether this expansive reading of the Commerce Clause holds water.

I. THIS COURT SHOULD GRANT CERTIORARI TO ANSWER THE IMPORTANT QUESTION OF WHETHER THE HOBBS ACT CAN REACH EVEN PURELY LOCAL ROBBERIES IN TODAY'S ECONOMY.

Under the Eleventh Circuit's construction of the Hobbs Act, virtually *every* local robbery can be charged as a federal crime. This position is constitutionally untenable. This is a quintessentially local case that should have been tried in state court. "The Constitution requires a distinction between what is truly national and what is *truly* local." *United States v. Morrison*, 529 U.S. 598, 617-18 (2000) (emphasis added). Under the Hobbs Act, the crime of robbery under state law converts to a federal crime only if, by committing the robbery, the defendant "obstructs, delays, or affects commerce." The commerce component of the Hobbs Act is vital to core principles of federalism. This Court "has never declared that Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities." *United States v. Lopez*, 514 U.S. 549, 559 (1995) (quotation omitted). To the contrary, the statute's commerce element "ensures that applications of the Act do not exceed Congress's authority." *Taylor*, 136 S. Ct. at 2081. As this Court has underscored, "[t]he Constitution creates a Federal Government of enumerated powers." *Lopez*, 514 U.S. at 552 (citing Art. I, § 8). And "even ... modern-era precedents which have expanded congressional power under the Commerce Clause confirm that this power is

subject to outer limits.” *Id.* at 556-57.

In identifying the Hobbs Act’s outer reach, courts look to the Supreme Court’s Commerce Clause cases. *Taylor*, 136 S. Ct. at 2079-80. In that context, the Court has made clear that Congress’ power is not coextensive with state prerogatives:

[T]he scope of the interstate commerce power must be considered in light of our dual system of government and *may not be extended* so as to embrace effects upon interstate commerce *so indirect and remote* that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government.

Lopez, 514 U.S. at 557 (quotation omitted) (emphasis added). Hence, “[t]o avoid giving Congress a general police power, there must be some limit to what Congress can regulate.” *Taylor*, 136 S. Ct. at 2087 (Thomas, J., dissenting).

The question in this case, therefore, is whether the robbery affected interstate commerce in a way that triggered Congress’ power “[t]o regulate Commerce . . . among the several States.” *Id.* at 2085 (quoting Art. I, § 8, cl. 3). More precisely, “for the Hobbs Act to constitutionally prohibit robberies that interfere with intrastate activity, that prohibition would need to be ‘necessary and proper for carrying into Execution

Congress' power to regulate interstate commerce.” *Id.* at 2084-85 (Thomas, J., dissenting) (quoting Art. I, § 8).

The robbery for which Sejour was convicted was entirely local and exclusively intrastate. Even the Eleventh Circuit has said, “[w]e have no doubt that Congress, when it passed the Hobbs Act, had in mind primarily offenses with a broad impact on interstate commerce, as opposed to local robberies normally prosecuted under state law.” *United States v. Farmer*, 73 F.3d 836, 843 (11th Cir. 1996); *see also United States v. Paredes*, 139 F.3d 840, 844-45 (11th Cir. 1998) (“We agree with the sentiments in *Farmer* that the Hobbs Act was intended to address offenses with a broad impact on interstate commerce, as opposed to local robberies normally prosecuted under state law, especially petty robberies or extortions.”) (quotation omitted) (finding minimum effect on commerce clause met where the defendants were prior felons), *superseded on other grounds as recognized in United States v. Brown*, 332 F.3d 1341 (11th Cir. 2003). Despite its previous rulings, and the fact that the robbery in this case was small-scale and wholly intrastate, the Eleventh Circuit affirmed Sejour’s conviction. This conflict clearly demonstrates the need for the Court to grant cert in order to answer the important question of what constitutes an effect on interstate commerce under the Hobbs Act.

In its decision, the Eleventh Circuit has effectively taken the position that virtually any robbery has an effect on interstate commerce because robberies have economic ripple effects. In today’s globalized

economy, this argument transforms virtually every state law robbery into a federal crime—with no meaningful limitation. As a result, the Government’s decision to charge Sejour under the Hobbs Act invokes precisely the type of generalized congressional police power that the Framers of the Constitution—and this Court in its cases construing the Commerce Clause—have flatly rejected. *See Lopez*, 514 U.S. at 567.

Sejour was convicted of robbing approximately \$200 from a single gas station at night with no customers present and no employee on the premises. The robbery prompted only a brief, one-hour disruption in service, with only two or three customers subsequently turned away. The funds were ultimately recovered, so the store owner was not deprived of the money’s use in interstate commerce. There was no evidence of an *actual* effect on interstate commerce at all.

The Government’s theory, which the Eleventh Circuit accepted, was merely that interstate commerce *could have* been affected because gas stations sell products that are obtained from out-of-state. But even a child’s lemonade stand may sell commercial products that ship from other states, such as packaged cookies or beverages made from powdered drink mix. Applying the Government’s theory to that hypothetical, this Court would necessarily have to conclude that robbery of a six-year-old lemonade vendor’s pocket change would trigger federal Hobbs Act jurisdiction because Congress has an interest in regulating the interstate

traffic of powdered drink mix and because the child was temporarily deprived of money that could otherwise move in interstate commerce. Such a theory runs far afield of the reasonable scope and purpose of Hobbs Act jurisdiction.

Indeed, aside from something like a roadside farm stand selling vegetables grown on site that accepts only cash, it is difficult to conceive of a robbery in today's world that does not involve materials or money that has moved in interstate commerce. (Even in that example, the government may argue that the fertilizer comes from out of state or that the machines were transported from out of state.) In today's global and digital economy, even the proverbial purse-snatcher is guaranteed to swipe a couple of goods that moved between states—such as a lipstick, a packet of tissues, or a wallet. Yet the Eleventh Circuit's acceptance of the Government's over-inclusive theory of Hobbs Act jurisdiction fails to take into account that reality.

The Eleventh Circuit also found that because the gas station accepted credit cards, and because its business was disrupted in the middle of the night for an hour, interstate commerce was affected. But here again, if there is to be any constitutionally legitimate limit on Congress's power to regulate state common-law robbery, the Eleventh Circuit's reasoning proves too much. Most people these days engage in commerce online by credit card, and almost every business accepts them. Many transact business exclusively by credit or debit card and, increasingly,

with digital currencies like Bitcoin. Even merchants at local farmers markets accept credit cards for payment for items like a loaf of bread or a sack of tomatoes.

By definition, therefore, any of these small-scale, local transactions implicate third parties or assets that reside out-of-state or move between states. Yet this can hardly mean that the theft a muffin from a farmer's market would trigger Hobbs Act liability if the baker accepts credit cards. Under the Eleventh Circuit's decision, however, such theft would qualify. Because it affords no room for a legitimate limiting principle, such a position is inherently flawed under the Commerce Clause. As this Court said in *Lopez*, "in view of our complex society," the Eleventh Circuit's decision "would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." *Lopez*, 514 U.S. at 557; *see also id.* at 567 ("To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States.").

In support of its unprincipled view of the federal police power, the Eleventh Circuit placed the dividing line between federal and state police power at "any" effect on interstate commerce," however "minimal," such that "[a] mere 'depletion of assets' of a business engaged in interstate commerce" would suffice. A-3 (citations omitted). But this position proves too much as all robberies involve a depletion of assets.

The Eleventh Circuit’s affirmation of Sejour’s conviction amounts to a breathtaking expansion of federal police power and an unconstitutional encroachment on the State of Florida’s prerogative to regulate common law robbery. The decision leads to the following legal conclusions, without exception:

1. **All local robberies of gas stations are per se Hobbs Act violations** because gasoline is always brought into gas stations by trucks that cross the Florida border;
2. **All local robberies of entities or individuals who use credit cards to sell goods are per se Hobbs Act violations** because credit card companies are national or international;
3. **All local robberies of individuals or entities that sell goods that were ordered, shipped, trucked, or otherwise moved into Florida are per se Hobbs Act violations** because the products crossed the Florida border (even if no evidence is presented that any item that was actually involved in the robbery moved across state lines);
4. **All local robberies that have any effect whatsoever on a local business—even for “about an hour”—are *per se* Hobbs Act violations** because businesses are involved in commerce, and commerce is both national and international in scope these days.

The Eleventh Circuit’s acceptance of the Government’s “anything-involving-money” standard for Hobbs Act jurisdiction does not satisfy the strictures of the Constitution. All told, the question for this Court is whether the Eleventh Circuit’s exceedingly expansive view of Hobbs Act jurisdiction—i.e., that it can reach local robberies and other purely intrastate conduct—leaves even a sliver of common law robbery exclusively to the States, where it belongs. The answer is “no.”

Not all courts have acquiesced on the overly expansive view of the commerce element of the Hobbs Act. For example, the Fifth Circuit, sitting *en banc*, twice divided evenly on the issue of the constitutionality of a prosecution under the Hobbs Act that involved a series of “purely local” armed robberies. *United States v. Hickman*, 179 F.3d 230 (5th Cir. 1999) (en banc); *United States v. McFarland*, 311 F.3d 376 (5th Cir. 2002) (en banc). Because they were evenly divided, the court in both cases affirmed. In *McFarland*, the dissenting judges asserted that “[t]he evidence does not reflect any *particular, concrete* effect on interstate commerce that in fact *actually* resulted from any of the four robberies.” *McFarland*, 311 F.3d at 393 (Garwood, J., dissenting). In *Hickman*, the dissenting judges argued that Supreme Court precedent required reversal of the convictions because “[t]he ad hoc and random use of the Hobbs Act to prosecute local robberies masks the dramatic reach of federal power required to sustain them.” *Hickman*, 179 F.3d at 243 (Higginbotham, J., dissenting); *see also Id.* at 244 (“Congress [] meant ‘commerce’ in the ordinary

sense, the flow of goods and people across state lines. It surely did not intend some metaphysical interpretation, where the taking of money from a cash register or attendant's purse becomes magically transformed into an economic event that bears on our national commerce.") (DeMoss, H., specially dissenting). Circuit Judge DeMoss specially concurred in another Hobbs Act prosecution involving local robberies on the ground that “[s]ooner or later the Supreme Court must either back down from the principles enunciated in *Lopez* or rule that the Hobbs Act cannot be constitutionally applied to local robberies.” *United States v. Nutall*, 180 F.3d 182, 190 (5th Cir. 1999) (DeMoss, J., specially concurring); *see also United States v. Marrero*, 299 F.3d 653, 655 (7th Cir. 2002) (upholding Hobbs Act conviction for robbery, but noting that “[w]e are troubled, however, by the inability of the government’s lawyer either in his brief or at argument to suggest a limiting principle in Hobbs Act prosecutions, despite the Supreme Court’s evident concern not to allow the concept of ‘commerce’ (interstate or foreign) to expand to the point at which every transaction in the American economy would be within Congress’s reach”).

Similarly, the Second Circuit refused to condone this far-reaching application of the Hobbs Act stating that:

It is the sensitive duty of federal courts to review carefully the enforcement of our federal criminal statutes to prevent their injection into unintended areas of state

governance. Exercising that duty, we find it necessary to nullify this attempted application of the Hobbs Act to circumstances it was never meant to reach. Incremental extensions of federal criminal jurisdiction arguably present a more pernicious hazard for our federal system than would a bold accretion to the body of federal crimes. At a minimum, a clear extension of federal responsibility is likely to be sufficiently visible to provoke inquiries and debate about the propriety and desirability of changing the state-federal balance. Less abrupt, more subtle expansions, however, such as nearly occurred here, are less likely to trigger public debate, and, yet, over time cumulatively may amount to substantial intrusions by federal officials into areas properly left to state enforcement. By [our] holding . . . , we seek to demarcate a point beyond which congress intended federal prosecutors not to pass.

United States v. Capo 817 F.2d 947, 955 (2d Cir. 1987). The Court has an opportunity in this case to set such a line of demarcation.

In light of the realities of our global economy, the question presented here — whether all robberies qualify under the Hobbs Act —. If there is to be any limit on Congress's constitutional authority to regulate state common law robbery—which, as a constitutional

matter, there must be if federalism and limited congressional police power are to remain foundational tenets of our democracy—*this* is the case for drawing that limit. As this Court observed in *Lopez*, “if [the Court] were to accept the Government’s arguments, we are hard pressed to post any activity by an individual that Congress is without power to regulate.” 514 U.S. at 564.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Miami, Florida
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Respectfully submitted,

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