

NO. 20-6323

ORIGINAL

Supreme Court, U.S.  
FILED

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In The Supreme Court of the United States

LAMONT ANDRIE THOMAS, Petitioner

V

UNITED STATES OF AMERICA, Respondent

ON PETITION FOR A WRIT OF  
CERTIORARI  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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(To be released from federal custody

on Nov. 2, 2020.

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SUPREME COURT, U.S.

## Questions Presented for Review

Question #1: Did the government lack legislative jurisdiction under Article I, Section 8, Clause 17 of the United States Constitution, to bring Criminal Charges against the Petitioner under 18 U.S.C. section 924(c), for an offense committed on land that was not under exclusive or concurrent jurisdiction of the United States?

Question #2: Did the District Court lack subject-matter jurisdiction to hear the government's claim under 18 U.S.C. section 924(c), for an offense that did not occur within the "Special Maritime and Territorial Jurisdiction" of the United States [18 U.S.C. section 7(3)]?

Question #3: Does a robbery committed by means of putting someone in <sup>fear of</sup> future injury to property of a relative of the victim under 18 U.S.C. Section 1951(a)(b), amount to the "Violent Physical force" (as articulated by this Court in Johnson (2010)) needed to satisfy the "physical force" standard under 18 U.S.C. section 924(c)(3)(1)(A)?

## List of Parties to Proceeding

- 1). Lamont Andie Thomas, Pro Se Petitioner - Plaintiff
- 2). Daniel Taylor Young, Assistant United States Attorney - Defendant
- 3). Alexander Patrick Berrang, Assistant United States Attorney - Defendant

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

### OPINION BELOW

The opinion of the United States Court of Appeals appears at Appendix \_\_\_\_\_ to the petition and is UNPUBLISHED.

### JURISDICTION

The date on which the United States of Appeals decided my case was October 5, 2020.

No petition for rehearing was timely filed in my case.

## STATEMENT OF THE CASE

This Petition for a Writ of Certiorari is founded upon the Constitution to the United States, and overwhelming Supreme Court precedent. The fact remains that I was convicted and sentenced in the District Court for the Eastern District of Virginia for a crime [18 U.S.C. Sec. 924(c)] that did not occur on a Federal Enclave nor was within the Special Maritime and Territorial Jurisdiction of the United States [18 U.S.C. Sec. 7(3)]. The District Court erred when it assumed Subject-matter jurisdiction for the purpose of deciding the merits of the Government's claim, therefore disregarding the Tenth Amendment's "Separation of Powers" Clause.

On January 15, 2015, a grand jury indicted the Petitioner on a four-count indictment in violation of 18 U.S.C. Sec. 1951(a) (Count 1) - Hobbs Act Robbery; 18 U.S.C. Sec. 1951(a) (Count 2) - Conspiracy to commit Hobbs Act Robbery; 18 U.S.C. Sec. 924(c) (Count 3) - Use of a firearm during and in relation to a crime of violence; 18 U.S.C. Sec. 924(c) (Count 4) - aiding and abetting the use of a firearm during and in relation to a crime of violence.

Following a two-day trial, On March 19, 2015, the District Court declared a mistrial. On April 21, 2015, the Petitioner pleaded guilty to Count 4 of the indictment. He then filed a timely appeal. On direct appeal, the Petitioner originally argued in his pro se Supplemental brief that in light of the Supreme Court's upholding of the "Categorical approach" in *United States v. Davis* (2019), Hobbs Act Robbery no longer "Categorically" qualified as a "Crime of Violence".<sup>①</sup> Because the Hobbs Act

① The Petitioner asks the Court to consider this argument is still viable if he is unsuccessful in his "jurisdiction" claim.

Statute [18 U.S.C. sec. 1951a] defined in its definition of "robbery", "fear of future injury to property... of a family member". The Petitioner held that putting someone in fear of "future" injury to property not in his immediate possession did not require the violent physical force (against property) as articulated in *Johnson I* (2010).

However, on or about September 25, 2019, the Petitioner amended his pro se Supplemental brief to include the argument that the District Court lacked subject-matter jurisdiction ab initio.<sup>②</sup> On October 5, 2020, the Fourth Circuit Court of Appeals affirmed the Petitioner's conviction and sentence. With regards to the Petitioner's jurisdiction claim, the Appellate Court never directly addressed the issue. On page 3 of its unpublished opinion, page 5, the Court stated:

"In accordance with *Anders*, we have reviewed Thomas' briefs and the record for any meritorious issue that fell outside the waiver and have found none".

This Petition follows.

### 1. Establishment of Federal Courts under the Constitution

Article III, Sec. 1 of the U.S. Constitution authorizes the establishment of "inferior" courts to the Supreme Court ordained by Congress. The jurisdiction of the Court derives from either the Constitution or, through legislative enactment. With regards to the judicial powers regarding legislative courts, Justice Marshall in *American Ins. Co. v. Canter*, (US) 1 Pet 511, 7 LEd 242 stated:

② The Petitioner's motion to order the transmittal of his "jurisdiction" issue sheds light on the issues raised on direct appeal and is the nucleus of this Petition.

"These Courts, then, are not Constitutional Courts, in which the judicial power conferred by the Constitution on the general government, can be deposited. They are incapable of receiving it. They are legislative Courts, created in virtue of the general right of Sovereignty which exists in the government, or in virtue of that clause [Article IV sec 3, clause 2] which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States". See *Glickson v. Zdanok*, 370 US 530, 543-544 (1962).

A Federal Court not created under Article III of the U.S. Constitution is a legislative Court. Their subject-matter jurisdiction is limited to matters occurring within the concurrent or exclusive legislative (territorial) jurisdiction of the "United States" (Federal Government). Their subject-matter jurisdiction are defined by statutes created by Congress for these Courts. Because legislative Courts are not Constitutional Courts created under Article III, they are incapable of extending the judicial power under that Article [III] to the subjects of jurisdiction enumerated there in Section 2 [Article III] (although they are exercising legislative judicial power).

Constitutional Courts, on the other hand, are authorized to extend the judicial power under Article III to the subjects of jurisdiction enumerated there in Section 2 [Article III]. This includes all felonies committed against the laws of the U.S. occurring within the territorial (legislative) jurisdiction of any particular Union State where the power to "punish" has been delegated, by enumeration, in the Constitution.

Constitutional power is merely the first hurdle that must be overcome in determining that a federal Court has jurisdiction over a particular or controversy (or case). It is a fundamental precept that federal Courts are Courts of limited jurisdiction.

The limits upon federal jurisdiction, whether imposed by the Constitution or Congress, must neither be disregarded nor evaded, (quoting Queen Equipment  
1 Erection Co. v. Kroeber, 437 US 365, 372, 374 (1978)).

The United States District Court for the Eastern District of Virginia is not a Court created under Article III, deriving its jurisdiction from the Constitution. It is an "inferior" Court "ordained and established" by Congress. Congress has authority to establish legislative courts throughout the several US Union States under their "Enclave Clause" (Article I, Section 8, Clause 17) powers. Just because Congress, when establishing the said District Court, did not declare in the Act (establishing the Court) that the Court was established under Article III, or under its Enclave Clause, does not change the limits on its judicial powers.

The United States District Court is not the same as the District Court of the United States. Federal Rules of Evidence State that:

"These various provisions do not, in terms, describe the same courts (and) in Congressional usage the phrase "district courts of the United States" without further qualification, traditionally has included the district courts established by Congress in the States under Article III of the Constitution, which are "Constitutional Courts", and has not included the territorial courts created under Article IV, Section 3, Clause 2, which are legislative courts." See Hombuckle v. Tombos, 85 US 648, 21 LEd 966 (1873).

Black's Law Dictionary, Eighth Edition, page 382, defines a "legislative Court" as:

"A Court created by a statute as opposed to one created by a Constitution".

The Supreme Court in International L<sup>1</sup>W. (I) V. Texaco Corp., 342 US 237, 241 (1952)

held:

"

The words "district court of the United States" [in their historic, technical sense], commonly describe Constitutional Courts created under Article III of the Constitution, not the legislative courts which have long been the courts of the Territories".

The Supreme Court, in granting certiorari in Mookin v. United States, 303 US 201, 205 (1938), held:

"The term "District Court of the United States" [in its historic and proper sense] has its historic significance. It describes the Constitutional Courts created under Article III of the Constitution. Courts of the Territories are legislative courts, properly speaking, and are not District Courts of the United States. We have often held that vesting a territorial court with jurisdiction similar to that vested in the District Courts of the United States does not make it a "District Court of the United States".

The phrase "district court of the United States" cannot be purporting or construed to mean describing the "United States district courts" sitting throughout the several 50 Union States as if they were one in the same court established under Article III. This would be subterfuge. The character of a federal court within the several 50 Union States is not dependent on its physical location.

Article I, Section 8, clause 9, is utilized only to establish Article III courts and not Article I courts. The power to create legislative courts on or for lands ceded within the several 50 Union States comes from Article I, Section 8, clause 17 (Enclave Clause), and from Article III, Section 3, clause 2 (property clause) for courts in the Territories of the "United States" (Federal Government). And since the term "district court of the United States" standing alone only includes Constitutional Courts created under Article III, this Court must conclude that the United States District Court for the Eastern District of Virginia is not an Article III

Constitution Court, but rather a legislative court established under Congress' Article I, Section 8, Clause 17 powers to hear cases that occur on the massive amounts of Federal land under their concurrent or exclusive legislative jurisdiction situated "within the Eastern District of Virginia". <sup>③</sup> See United States v. King, 19 F. 398, 401-403 (9th Cir. 1954).

See Exxon Mobil Corp. v. Allapattan Services, Inc. 545 U.S. 546, 952, 125 S.Ct. 2611, 162 LEd. 2d (2005) (The district courts of the United States are courts of limited subject-matter jurisdiction); See Howles v. Russell, 551 U.S. 205, 127 S.Ct. 2360, 2365, 168 LEd. 2d 96 (2007) ("Within Constitutional bounds, Congress decides what cases the Federal courts have jurisdiction to consider"). Thus, "when a district court lacks subject-matter jurisdiction over an action, the action must be dismissed" (quoting Arbaugh v. Y & H Corp., 546 U.S. 500, 506-07, 126 S.Ct. 1235, 163 LEd. 2d 1097 (2006)).

## 11. The Offense was not Committed On a Federal Enclave

The jurisdiction of the U.S. in this case was not authorized under Article I, sec. 8, Cl. 17 which reads:

"To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten square miles), as may, by cession of particular States, and the Appropr of Congress, become the Seat of the Government of the United States, and to exercise like authority over all places by the consent of the legislature of the State in which the same shall be for the Erections of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings".

<sup>③</sup> There should be no implication that "district courts of the United States" as specified in 18 U.S.C. sec. 3231 is to mean "United States district courts" when that term was

intentionally excluded. The definition of "district courts of the United States" in Title 28 U.S.C. sec. 451, which includes the term "United States district court" in that definition does not make those courts applicable to the term "district courts of the United States" in Title 18 U.S.C. Sec. 3231. Confer, "As used in this title", Title 28 U.S.C. sec. 451. If the term, words, or phrase "district courts of the United States" as used in Title 18 U.S.C. Sec. 3231 included the "United States district courts" in Title 28 U.S.C., it would not have been necessary for Congress to state: "As used in this title", Congress would have presumably stated, "As used in all titles".

The Criminal complaint and indictment lodged against the Petitioner failed to charge an offense against the laws of the United States because no jurisdiction had been ceded to the United States nor was jurisdiction accepted over the place where the offense (Criminal activity) was to have occurred. The alleged offense, [18 U.S.C. Sec. 924(c)] was not committed on a Federal Enclave. The Government failed to establish on the record that the land upon which the offense was committed, was under legislative jurisdiction of the United States.

To exercise federal legislative jurisdiction on enclaves, the federal Government must (1) acquire land within a State; (2) the State must cede or consent to federal jurisdiction over the land and; (3) the federal Government must accept jurisdiction. See *Paul v. United States*, 371 U.S. 245, 264, 267, 83 S. Ct. 426, 9 Fed. 2d 292 (1963). Also, any property acquired by the Government after 1940, the Government must accept jurisdiction "by filing a notice of acceptance" with the Governor of the State or in a manner prescribed by the laws of the State where the land is situated. See *Wood v. Am. Present Elevator Corp.*, No. 11-397, 2011 U.S. Dist. LEXIS 9239, at 6-7.

(E.D. La. May 13, 2011) (quoting 40 U.S.C. Sec. 3112(b)). Federal jurisdiction attaches to lands under federal control. See Anderson v. Crown Cork & Seal, 93 F. Supp. 2d 697 (April 19, 2000). Federal Enclave provision applies only to lands owned by the Government. See McCormick v. C.E. Thurston, 977 F. Supp. 400, May 23, 1997.

Since the District Court's jurisdiction was limited to territories owned by the U.S., the "Federal Enclave" provision applies here. The Government never established on the record that the offense which occurred on March 19, 2010, did not occur on land owned by the U.S., which would authorize laws of the United States (all laws not delegated to Congress under the Constitution) to extend to such land thus, making it a "Federal Enclave". Even so, the U.S. does not have jurisdiction over all lands owned by the federal government within the States. In absence of the State's consent or a cession of jurisdiction, and, since 1940, in the absence of an explicit acceptance of jurisdiction by the federal government, the federal government's possession is "simply that of an Ordinary proprietor". Paul, 371 U.S. at 264 (citing Dravo Contracting, 302 U.S. at 141-42).

A necessary requirement for federal enclave jurisdiction over the land in which the 7-11 [convenient store] / Citco [gas station]<sup>(4)</sup> was situated was not met by the government, which was establishing that the land in question was either ceded to the government by the Commonwealth of Virginia or purchased by the government and accepted by Congress. More importantly, a federal enclave is created only when the

<sup>(4)</sup> On the date of the offense [March 19, 2010], the 7-11 and Citco were a combined gas station and convenient situated on land in Virginia, not two separate locations.

United States government acquires exclusive jurisdiction over land with consent of the State or Commonwealth containing the land. See *United States v. Johnson*, 944 F.2d 980, 984-85 (2nd Cir 1993).

Federal Enclave jurisdiction revolves around the precise location of the events giving rise to the claims. The District Court lacked subject-matter jurisdiction to even hear the government's merits because the land which the offense was committed was not a U.S. territory; the land was not purchased by the government prior to March 19, 2010 [date of offense]; the land was not ceded by the Commonwealth of Virginia and accepted by Congress, and, exclusive and/or concurrent jurisdiction over the land was not acquired by the U.S. prior to the date of offense.

The District Court erred when proceeding on the government's merits by assuming that the burden of establishing legislative jurisdiction over the place of the offense was met. No proof was entered on the record that would have satisfied the "Federal Enclave" requirements nor were there any constitutional or legislative authority entered onto the record that would authorize the prosecution of the Petitioner ab initio.

The Supreme Court has made it clear that the merits of a claim and a federal court's jurisdiction to entertain it are wholly distinct inquiries and that jurisdiction generally must be resolved first. See *Steel Company v. Citizens for a Better Environment*, 523 U.S. 83, 89, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998). The Steel Court "declined to endorse" the practice, frequent among district and appellate courts of "assuming jurisdiction for the purpose of deciding the merits", an approach the Ninth Circuit labeled "The doctrine of Hypothetical jurisdiction".

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See United States v. Troescher, 99 F.3d 933, 934 n.1. (9th Cir 1996). This practice, the Troescher Court explained:

"Carries the Courts beyond the bounds of authorized judicial action and thus offends fundamental principle of Separation of powers".

The Petitioner's Sentence and Conviction should be overturned in light of the Supreme Court rulings in United States v. Williams, 341 US 58, 66-67 (1951); Rodman v. Rothier, 68 LEO 759, 264 and; Adams v. United States, (1943), 319 US 312, 87 LEO 1421, 63 S. Ct. 112. The Williams Court stated:

"In a Criminal case we have said that a person convicted by a Court without jurisdiction over the place of the crime, could be released from restraint by habeas corpus".

The Rothier Court reversed the lower Court's order denying petitioner's habeas relief because at the time the crime charged in the indictment, the United States had acquired no title in the land embraced within Camp Lewis Military Reservation. Rothier was ordered released from custody.

The Adams Court held that the United States had not accepted jurisdiction over the lands upon which the crime was committed and therefore the District Court was without jurisdiction to try and sentence the defendants.

### III Special Maritime and Territorial Jurisdiction of the United States

Title 18 of the United States Code (U.S.C.) limits the federal District Court's jurisdiction to offenses occurring within the Special Maritime and

Territorial Jurisdiction of the United States [18 U.S.C. sec 7(3)] Since the judicial powers under Title 18 do not come from Article III, but rather from legislation, all laws created under Title 18, which are not delegated to Congress by the Constitution, may only be enforced within its territories. In the Petitioner's case, the Government had the burden of proving that the criminal offense took place within its territory. The location of the crime had to have occurred within the confines of 18 U.S.C. sec. 7(3). See United States v. Lutton, 486 F.2d 1021 Nov. 21, 1973.

The statement in the Criminal Complaint and Indictment stated that the offense(s) took place "within the Eastern District of Virginia" does not establish jurisdiction because the precise location of the offense was not proven, by a preponderance of evidence, to have been committed within the Special Maritime and Territorial Jurisdiction of the United States [18 U.S.C. sec. 7(3)]. "Criminal jurisdiction of the United States is necessarily limited to their own territory, actual or constructive; their actual territory is coextensive with their possessions, including maritime league from their shores into sea". (quoting United States v. Smiley (1864, CCND Cal) 6 Sawy 640, 27 F Cas 1132, No. 16317).

As in the case of United States v. Penn (1880, CC D Va) 41 Hughes 491, 46 F 669, the Court concluded where United States purchased estate at tax-sale for purpose of National Cemetery, jurisdiction of which was never ceded by state, United States Courts had no jurisdiction of offense of petty larceny committed thereon. The Court stated:

"It seems too plain for doubt, much as we may regret the fact in this particular case, that this court has no jurisdiction in the premises, and the demurrer accordingly must be overruled, and the plea sustained". The Petitioner argues

that the location of the offense was outside of the Special Maritime and Territorial Jurisdiction of the United States and thus, the District Court lacked subject matter jurisdiction to hear the Government's claim, because the Government never established on the record, that the United States possessed exclusive legislative (territorial) jurisdiction over the place where the crime was committed.

#### IV. Reliance On The "Commerce Clause" Is No Help To The Government

The Tenth Amendment to the U.S. Constitution is very clear that, "The powers not delegated to the United States by the Constitution... are reserved to the States respectively, or to the people" (Article I, Sec 8, Clause 3). See *Cavel Ann Bond v. United States*, 180 LEd 2d 269 (2011). Congress is authorized to <sup>(5)</sup> regulate commerce

In the seminal case of *Gibbons v. Ogden*, 9 Wheat 1, 189-190, 196 (1824), Chief Justice Marshall, speaking for the Supreme Court, stated that:

"Commerce undoubtedly... is regulated by prescribing rules for carrying on that intercourse. What is that power? It is the power to regulate; that is, to prescribe the rule by which Commerce is to be governed".

In light of the aforementioned legal definitions, and Supreme Court authority, "Commerce" is regulated by prescribing "regulations (rules)", not felony criminal statutes. Even if the Government cites Article I, Sec 8, Cl 18 (the Necessary and Proper Clause) as it's

<sup>(5)</sup> "Regulate" is defined as: "To fix, establish, to govern or direct according to rule."

"Rule" is defined as: "An established standard, guide, or regulation". Source: Black's

Law Dictionary, Sixth Edition.

authority, this authority grants no Constitutional "Power" to "punish". The Government may not construe Article I, Sec. 8, Cl. 18 as an implied power to "punish". The Supreme Court in *Kansas v. Colorado*, 206 U.S. 46, 88 (1907) stated otherwise:

"The last paragraph of the Section [8] which authorizes Congress to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof, is not the delegation of a new and independent power, but simply provision for making effective the powers theretofore mentioned"

The Constitution contains only four provisions wherein the Framers delegated to congress the power to punish (only three which are Criminal): (1) Counterfeiting the Securities and Current Coin of the United States (Article I, Sec. 8, Cl. 16); (2) Piracies and Felonies committed on the high seas (Article I, Sec. 8, Cl. 10) and; (3) Offenses against the Law of Nations (and Treason) (Article III, Sec. 3, Cl. 12).

Congress' authority to "Make all Laws which shall be necessary and proper for carrying into execution the foregoing Powers", is not the power to "punish" under the Commerce Clause (Article I, Sec. 8, Cl. 13); as opposed to the power to "punish" under the Counterfeiting Clause and the high Seas Clause.

In *United States v. Keboleaux*, 186 F.3d 2D 540 (2013), the Supreme Court stated:

"The Necessary and Proper Clause authorizes Congressional action incidental to an enumerated power... no great substantive and independent power can be implied as incidental to other powers, or used as a means of executing them. The enumeration presupposes something not enumerated."

See Carroll v. United States, 138 LEd 2d 799 (2011) (Justice Thomas Dissent).

Article IV, Sec. 3, Cl. 2 gives Congress power to dispose of and make all needful rules and regulations respecting territory or other property belonging to the United States...

Since the "Necessary and Proper" Clause is not a grant of power, but simply a provision for carrying into the execution the foregoing powers, how then does it grant the power to ~~possess~~ where that power has not been delegated? The Federal Government is a government of delegated, limited, and enumerated powers.

In Printz v. United States, 521 US 898, 923-924 (1997), the Supreme Court explained:

"The Constitution is the Supreme Law of the land ordained and established by the people. All legislation must conform to the principles it lays down. The question is not what power the Federal Government ought to have but what powers in fact have been given by the people. When a law for carrying into Execution the Commerce Clause violates the principle of State Sovereignty reflected in the various Constitutional provisions we mentioned earlier, it is not a law proper for carrying into Execution the Commerce Clause, and is thus merely an act of usurpation which

deserves to be treated as such".

### ✓ The Petitioner's Conviction and Sentence Violates the Tenth Amendment's Separation of Powers Clause

The Tenth Amendment was enacted to prevent this exact of encroachment by the Government, granting itself a new power to punish which is not a delegated power, under the guise of "regulating Commerce", and "Necessary and Proper Clause". Powers that are not expressly granted by the Constitution are reserved to the States or to the people. To forestall any suggestion to the contrary, the Tenth Amendment was adopted.

It is an established principle that the attainment of a prohibited end may not be accomplished under the pretext of the exertion of powers which are granted. See United States v. Butler, 297 US 1, 67-69 (1936). See also Munn v. Illinois, 94 US 113, 124. And since every addition to the national legislative powers to some extent detracts from or invades the power of the States, it is of vital moment that, in order to preserve the fixed balance intended by the Constitution, the powers of the general Government be not so extended as to embrace any not within the express terms of the Federal Grants or the implications necessarily to be drawn therefrom. It is no longer open to question that the general Government, unlike the States, possesses no inherent power in respect of the internal affairs of the States. See Hammer v. Dagenhart, 247 US 251, 275. See Texas v. White, 7 Wall 700, 725. Also see Carter v. Carter Coal Co., 298 US 238, 294-296 (1936).

The Supreme Court established the same fact 29 years before Carter, in its opinion in Kansas v. Colorado, 206 US 46, 87-88 (1907):

"The Government, then, of the United States, can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given or given by necessary implication.

"The Government of the United States is one of delegated, limited, and enumerated powers". See Pollard v. Hogan, 3 How (US) 212, 221-224, 11 LEd 565 (1845).

Other than jurisdiction ceded to them to form the District of Columbia, the Government can only exercise legislative jurisdiction over other like place via Article I, Sec 8, Cl 17. The Government also exercises jurisdiction concurrent with the Union States as to the enumerated powers delegated to them. This allows the U.S. District Court to hear cases similar to Article III Courts, but its jurisdiction, aside from the powers delegated by the Constitution to Congress, is limited to its territories. However, territorial jurisdiction over lands with each state (unless ceded, or purchased by the U.S.), remains with that respective state.

The Federalist Papers, No. 39, states:

"Jurisdiction extends to certain enumerated objects only; and leaves to the several States a residuary and inviolable Sovereignty over all other objects".

Because the Federal Government has no territorial jurisdiction within the Union States (except where relinquished through consent to purchase or cession, and acceptance), they can only exercise the powers delegated to them. When they exercise an undelegated power to "punish" felonious crimes under the guise of carrying into execution their "Commerce Clause" "power", they are exercising exclusive legislative jurisdiction which must occur within lands under their concurrent or exclusive jurisdiction per Article I, Sec 8, Cl 17. See States v. Illinois Central R. Co., 154 US

225, 241 (1894) (quoting *New Orleans v. United States*, 10 Peters 662, 737, 30 US 662 (1836)). See also *The State of Rhode Island v. The State of Massachusetts*, 12 Peters 657, 733, 37 US 657 (1838).

In order for the Government to justify using the "Commerce Clause" in prosecuting the Petitioner under 18 U.S.C. Sec. 924(c), it must have obtained exclusive or concurrent legislative jurisdiction over the place where the offense was to have occurred. The Government cannot use any power to "punish" unless that power was delegated to Congress. There are only four provisions which the Constitution grants Congress the power to "punish". Any other power to punish nationwide which are not expressly granted by the Constitution, are only applicable within the territories of the United States (i.e. Puerto Rico, Guam, Virgin Islands, and lands and places purchased or leased by the State to the Government). Even still, Congress must accept jurisdiction over the place leased or purchased under Article I, Sec. 8, Cl. 17, by filing a "notice of acceptance" with the State Governor under 40 U.S.C. Sec. 3112. See *United States v. Arca* (1980, CA1 Puerto Rico) 630 F.2d 836 (offenses other than those set forth in USC Title 18 need not occur within Special Maritime and Territorial Jurisdiction of the United States as defined by 18 USC 7 since definition applies only to Title 18). See *Gibbons v. Ogden*, 9 Wheat 1, 189-191 (1824); *Surplus Trading Co. v. Cook*, 281 US 647, 654 (1928) (citing *United States v. Cornell*, 2 Mason, 60, Fed. Case No. 14, 867 (Mr. Story, at Circuit); *United States v. Bevans*, 16 US (3 Wheat) 336, 389, 4 LEd 404 (1818); *Bowen v. Johnson*, 306 US 19, 22 (1939)).

Federal Courts have no common law jurisdiction in criminal cases. See *Tennessee v. Davis*, 100 US 257, 282 (1880). Criminal jurisdiction of the United States is in general based on the territorial principle. (quoting *United States v. Flores*, 289 US 137, 155 (1933)).

See Title 18 U.S.C. sec. 1; See United States v. Perez, at 111 LEGAL STANDARD, LEXIS 75086,  
No. -CA-06-0001-MAG (Mej.) (N.D. Ca 2006).

V.T. Hobbs Act Robbery No Longer Categorically Qualifies as a  
Crime of Violence in Light of the Supreme Court's Holding  
in United States v. Davis, 139 S. Ct. 2319 (2019)

In United States v. Davis, 139 S. Ct. 2319 (2019), the Supreme Court upheld the categorical approach, which looks at the statute's definition to determine whether an offense qualifies as a "Crime of Violence" under 18 U.S.C. 924(c). In the Petitioner's pro se Supplemental brief filed in the Fourth Circuit Court of Appeals (No. 15-4578), he argued that Hobbs Act robbery did not qualify as a "Crime of Violence" in light of the Supreme Court's rulings in Johnson v. United States, 135 S. Ct. 2551 (2015). His appeal was placed in abeyance pending a decision in United States v. Ali (No. 15-4433).

Soon after, the Supreme Court issued its opinion in Davis, which became a new law not previously available to the Petitioner. The Petitioner then supplemented his pro se brief arguing that under Davis, his conviction was invalid. Of course his argument was denied by the appellate court on October 5, 2020. The Petitioner now still argues that the Supreme Court in Davis, which invalidated 18 U.S.C. 924(c)'s residual clause, applied to his 924(c) conviction. The Petition basis his argument on the fact that Davis upheld the categorical approach.

"Robbery" under 18 U.S.C. sec. 1951(b) is defined as the:

" Unlawful taking or obtaining of personal property from a person or in the presence of another, against his will, by means of actual or threatened force, or violence;

or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family, or of anyone in his company at the time of the taking or obtaining"

In order for the Petitioner's 924(c) conviction to stand, the elements clause in 924(c) must be satisfied by the Statutory definition of "Robbery" under 18 U.S.C. Sec. 1951(b).

The Fourth Circuit Court of Appeals in *United States v. Simms* (2019) stated that if a statute lists both "violent and nonviolent means" of committing the offense, it does not categorically qualify as a crime of violence under 18 U.S.C. Sec. 924(c). The Petitioner contends that Hobbs Act robbery (18 U.S.C. Sec. 1951(a)) no longer qualifies as a crime of violence in light of *Davis*, because the statute punishes conduct that sweeps broader than the elements clause in 924(c). So the Petitioner's 924(c) conviction can only stand post-*Davis*, if the predicate [Hobbs Act robbery] offense involved "the use, attempted use, or threatened use of physical force against a person or property". In applying the categorical approach to the Hobbs Act statute [18 U.S.C. Sec. 1951(a)], it is clear that the Hobbs Act statute punishes not just behavior that merely results in physical injury.

In the "Robbery" definition [18 U.S.C. Sec. 1951(b)], it clearly list as a means of committing the offense: "fear of injury, immediate or future to ... property of a relative or member of his family". Giving this means, "the use, attempted use, or threatened use of physical force against ~~the~~ property" is merely impossible. The 'fear of injury to property' need not even be immediate but can be in the future, and the property need not even belong to the immediate victim as the property can belong to a relative. This alone prevents Hobbs Act robbery from qualifying as a crime of violence under 924(c)'s force (elements) clause because putting someone in fear of future injury to property of the victim's relative, does not require the 'violent physical force' as articulated by the

Supreme Court in Johnson v. United States, 559 U.S. 133, 140, 130 S.Ct. 1265, 176

L.Ed.2d (also known as Johnson I (2010)). The Johnson I (2010) Court held that

"Violent force": necessarily "connotes a substantial degree of force". In order for "physical force" (as described in 924(c)) to qualify as Johnson I's "Violent physical force" standard, the degree of force employed must be "Capable of causing physical pain or injury" to another person.

924(c)'s elements clause requires violent physical force against a person or property.

But compelling a victim to surrender property against his will, such as his Picasso painting,

with a threat to devalue his relative's stock holding, is likely to be as or more as a threat

to punch the victim in the face. Each involves a clear "threat of injury" and thus would

satisfy the elements of Hobbs Act robbery, but only the threat to punch the victim in the

face involves the use of violent physical force. Although threats of fear of future injury to

property describes future actions to injure one's property, it does not involve the violent

physical force within the meaning of Johnson I. "Violent physical force" under Johnson I

should be applied to 924(c) by this Court.

The plain language of 1951(b) clearly supports the notion that committing Hobbs Act robbery by

causing fear of future injury to property does not require the use or threatened use of any

physical force, much less violent physical force. (quoting United States v. Chea, 2019 U.S.

Dist. (Ex 15 177651 (N.D. Cal. 2019)). The Cheea Court has been the first Court to interpret

Hobbs Act robbery using the categorical approach consistent with Davis (2019). In

vacating the defendant's 924(c) convictions stemming from Hobbs Act robbery, the Court

in Cheea stated:

"

... Thus, the definition of robbery under the Hobbs Act "sweeps more broadly" than the

elements clause under 924(c) and could not be a categorical match to allow a 924(c)

conviction."

The Fourth Circuit held that Hobbs Act robbery was a crime of violence under the force clause of 924(c). See *United States v. Mathis*, 992 F.3d 1242, 1263 (4th Cir. 2019).

However, the Mathis opinion is not consistent with the Supreme Court's upholding of the categorical approach. In fact, Mathis never mentions "categorical approach" in rendering its decision. Judge Claudia Wilkin, before closing her opinion in Chea, did note that other courts have held since Johnson II that Hobbs Act robbery is a crime of violence for 924(c) purposes under the elements clause. But she pointed out that "Some of those opinions do not apply the categorical approach correctly or at all, which renders their conclusions incorrect." She noted, for example, the Eleventh Circuit's decision in *re Fleur*, 884 F.3d 1337 (11th Cir. 2016), holding Hobbs Act robbery is a conviction under 924(c)'s elements clause because the defendant's indictment said that he committed the robbery "by means of actual or threatened force, violence, or fear of injury". The Court recognized that Davis, however, forbids a court from looking at the indictment to see how a defendant committed the offense tied to a 924(c) charge. The Court also said that the other courts did not apply Johnson I's definition of physical force against property.

The ~~Seventh~~<sup>Appellate</sup> Court erred when it held that I didn't raise the Hobbs Act offense in District Court in order "to preserve an argument on appeal". Davis was decided over 4 years after the District Court's sentencing of the Petitioner. Also, the Davis ruling created a new law and an amendment to the pro se brief was timely submitted arguing Davis now, and not Johnson II. Davis was not available to argue the categorical approach in deciding whether Hobbs Act robbery constituted a crime of violence under 924(c) at the time of the Petitioner's sentencing in District Court.

In the end, when using the Categorical approach in light of Davis, Hobbs Act robbery no longer qualifies as a Crime of violence under 924(c) because putting someone in ~~future~~ of future injury to property of his relative does not require the violent physical force under Johnson I (2010). Thus, the Hobbs Act Statute punishes conduct that sweeps broader than the elements in 924(c).

### VII. Reasons for Granting Petition.

There are multiple reasons why this petition shall be granted. First, the Constitution grants only limited powers to Congress. And to prevent encroachment by the Government, the Tenth Amendment was enacted. The punishment of the Petitioner for an offense not delegated to Congress, can only occur within its territory. Title 18 U.S.C. is strictly limited to the Special Maritime and Territorial Jurisdiction of the United States [18 U.S.C. Sec. 7(3)]. Moreover, this Court has consistently held that in Criminal Cases, the Government must have obtained exclusive and/or concurrent jurisdiction over the location of the offense.

This petition is of significant national importance because, just like the Petitioner, there are thousands of individuals incarcerated for a conviction under Title 18 U.S.C. in which the jurisdiction over the location of the offense was not purchased or ceded by and/or to the Government. Such gross encroachment is inconsistent with the Separation of Powers Clause. Every State is sovereign in its own right. And the federal Government does not have common law jurisdiction in the states. The practice of the lower courts of "assuming jurisdiction" for the purpose of deciding the Government's merits, extends the courts beyond their judicial powers under Article III. Federal courts are courts of limited jurisdiction. No matter the magnitude of the case presented to it.

Unless the case involves an offense where the Constitution grants the power to "punish", the Court's subject-matter jurisdiction is limited under Title 18 U.S.C. to offenses within its territories. Furthermore, the Government has the burden of proving beyond any reasonable doubt, that the offense charged occurred within the Special Maritime and Territorial Jurisdiction of the United States. This practice should end here, as the Government's encroachment on the police powers of the States have led to countless federal convictions of individuals that are inconsistent with our Constitution and numerous Supreme Court rulings.

As the case with Hobbs Act robbery [18 U.S.C. Sec. 1951(a)] and possession of a firearm by a convicted felon [18 U.S.C. Sec. 922(g)], two of the most common offenses successfully prosecuted by the Government, the prosecution of the offenses without exclusive (or concurrent) jurisdiction over the location of the offense, creates a habit of the United States being enabled to exercise police powers not granted by Congress per the Constitution. This habit increases into entitlement due to the fact that lower courts rarely ever make the inquiry into its own jurisdiction to hear the case, and the Government's legislative jurisdiction to prosecute the case. Article I, Sec. 8, Cl. 17 of the Constitution makes it emphatically clear that Congress' authority to extend its laws to places and locations into the several States is confined to its Federal Enclaves; places ceded to it by the State; places and lands purchased by the United States. Even still, Title 40 U.S.C. Sec. 3112(b) sets out strict requirements for the purchase by, or cession to the United States.

The Petitioner has proven that his Sentence and Conviction has been invalid ab initio because the Government violated the Tenth Amendment by prosecuting the Petitioner for an offense in which the United States did not prove by a preponderance of evidence

that it possessed exclusive (or concurrent) jurisdiction over the location of the offense. Nor did the United States prove that the location of the offense was a Federal Enclave. A ruling in favor of the Petitioner would put an end ~~to~~ to the Government's violation of the Tenth Amendment and put the power back into the States. Such a ruling will also force the States to cease relying on the Government to police its boundaries.

As for the Hobbs Act robbery Statute [18 U.S.C. Sec. 1951(a)], after this Court's ruling in *Davis*, it can no longer serve as an predicate offense to the 924(c) charge in which the Petitioner was convicted on. It is not the residual clause of 924(c)(3)(B) that is of national importance. It is this Court's upholding of the categorical approach. Post *Davis*, Courts are still applying the conduct base approach or not even applying the categorical approach at all. This issue will undoubtedly be presented again to the Supreme Court although *Davis* tells us how to solve any discrepancy regarding the Hobbs Act Statute.

Lower Courts have not applied Johnson's "physical force" standard to 924(c). The Ninth Circuit has, to the Petitioner's knowledge, been the only Circuit to apply Johnson to 924(c), stating:

"The only reasonable way to apply the Johnson standard is to require likewise that the offense involve 'violent' physical force against property." (*United States v. Chao* (2019))

The Appellate Court did not consider applying Johnson's 'violent physical force' against 'property' under 924(c). If so, it would have to conclude that putting someone in fear of 'future' injury to 'property' of his relative, does not require the 'violent physical force' of Johnson. Then it would have to conclude, that, since Hobbs Act statute lists a nonviolent means to commit the offense, it can no longer categorically qualify as a 'crime of violence' in light of *Davis*. The District Court

Sentenced the Petitioner to 84 months on the 924(c) Conviction on September 9, 2015. On appeal, the Fourth Circuit refused to hear my Hobbs Act 924(c) merits in depth because the argument was not preserved in the District Court. This was an error on the Appellate Court because, the plea agreement did not contain any language that stated or inferred that any unconstitutional conviction or sentence would not be able to be challenged. Furthermore, the procedural default should be excused because Johnson II at the time ~~was not~~ could not have been used by the Petitioner to raise in the District Court. At that time, Johnson II did not extend to 924(c); and making such claim would have been futile. However, Davis overturned case law by extending Johnson II to 924(c). The Petitioner timely amended his pro se Supplemental brief to include his sentence and conviction being unconstitutional in new light of Davis. Well within the One year time frame. There was no way the Petitioner could have challenged his sentence and conviction under Davis until last year, which he did. The Appellate Court erred when it refused to view the merits of the Petitioner's 924(c) claim in light of Davis.

### VIII. Conclusion

For all the reasons stated herein, this petition for a writ of Certiorari should be granted.

Respectfully Submitted,  
*Lamont Archie Thomas*

10-31-2020