NO._____

In The
Supreme Court of the United States

DEVONTA DOYLE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Fourth Circuit precedent, which is consistent with precedent from all other Circuits, holding that an intrastate robbery's *de minimis* effect on interstate commerce satisfies the Hobbs Act's jurisdictional element (18 U.S.C. § 1951), violates the Constitution and this Court's holdings and rationales in *United States v. Morrison*, 529 U.S. 598 (2000) and *United States v. Lopez*, 514 U.S. 549 (1995), as both decisions preclude the federal criminalization of traditionally local violent crimes?

2. Whether the Hobbs Act's jurisdictional element violates the Constitution when applied to the federal criminalization of traditionally local violent crimes without proof of a substantial effect on interstate commerce?

3. Whether Congress intended to criminalize federally the intrastate robbery of a grocery store's cash register when it passed the Hobbs Act?

LIST OF PARTIES IN THE COURT OF APPEALS

United States of America

Devonta Doyle

PROCEEDINGS RELATED TO THIS CASE

United States v. Devonta Doyle, 2:18-cr-177-RAJ-LRL-1 (E.D. Va. Oct. 10, 2019)

United States v. Devonta Doyle, 19-4808 (4th Cir. July 25, 2022)

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IN THE
SUPREME COURT OF THE UNITED STATES

No.:

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Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

Mr. Devonta Doyle 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 Fourth Circuit rendered and entered in case number 19-4808 on July 25, 2022, *United States v. Doyle*, which reversed his conviction and sentencing for Count 7 (not relevant to this Petition) and affirmed his Hobbs Act convictions despite the Commerce Clause issues raised herein.

OPINION BELOW

The decision of the United States Court of Appeals for the Fourth Circuit, which reversed in part, and affirmed in part, the judgment of the United States District Court for the Eastern District of Virginia, is contained in the Appendix (A1-A4).

JURISDICTIONAL STATEMENT

On July 25, 2022, the United States Court of Appeals for the Fourth Circuit issued a per curiam written opinion affirming Petitioner's convictions as to several Hobbs Act (18 U.S.C. § 1951) robbery counts and vacating one of Petitioner's convictions under 18 U.S.C. § 924 which erroneously resulted from an attempted Hobbs Act robbery. (A1-A4). Petitioner did not file a request for a rehearing and no request was made, or order entered, granting an extension of time to file a petition for a writ of certiorari.

This Petition is timely filed on October 24, 2022, within 90 days of the date of the Court of Appeals' judgment. Because the 90th day after judgment occurred on October 23, 2022, a Sunday, this Petition is timely filed by Monday, October 24, 2022. *See* U.S. SUP. CT. R. 30.1.

The district court had jurisdiction because the Petitioner was charged with violation of federal criminal laws. The Fourth Circuit Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that the courts of appeals shall have jurisdiction from all final decisions of the United States district courts.

This Court has jurisdiction to review the judgment of the Court of Appeals pursuant to 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional provisions and statutes are involved in this case:

U.S. CONST. AMEND. X:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

U.S. CONST. ART. I, SEC. 8, CL. 3:

> The Congress shall have power . . . To regulate commerce with foreign nations, and among the several states, and with the Indian Tribes.

U.S. CONST. ART. I, SEC. 8, CL. 18:

> The Congress shall have power . . . 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.

18 U.S.C. § 1951:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery . . . or attempts or conspires so to do . . . shall be fined under this title or imprisoned not more than twenty years, or both
>
> . . .
>
> (b)(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

STATEMENT OF THE CASE

Summary of Material Facts

Petitioner was charged in an eight-count indictment for conspiracy to interfere with commerce by means of robbery, in violation of 18 U.S.C. § 1951(a); Hobbs Act robbery and attempted Hobbs Act robbery, in violation of 18 U.S.C. §§ 1951(a) and 2; brandishing a firearm during a Hobbs Act robbery, in violation of 18 U.S.C. §§ 2, 924(c)(1)(A)(ii); and discharging and brandishing a firearm during an attempted Hobbs Act robbery, in violation of 18 U.S.C. §§ 2, 924(c)(1)(A)(iii) (Count 7). Count 8 was dismissed on motion of the government, and Petitioner pleaded guilty to the seven remaining counts.

The allegations in the indictment relevant to this Petition charged Hobbs Act robberies of two Food Lion grocery stores and one attempted robbery of a Harris Teeter grocery store. All three instances occurred in the Tidewater area of Virginia, two in Virginia Beach and one in Chesapeake. App.7.

The written Statement of Facts submitted by the parties to the District Court included the following facts:

Mr. Doyle and his co-defendants conspired to rob three local grocery stores. In each instance the defendants acted as either a lookout, a getaway driver, or a masked gunman.

On September 25, 2018, Mr. Doyle and the other co-defendants robbed a grocery store in the City of Chesapeake, Virginia, and stole $4,880.

On September 29, 2018, Mr. Doyle and the other co-defendants robbed another

grocery store in Virginia Beach, Virginia, and stole $731.

On October 3, 2018, Mr. Doyle and the other co-defendants attempted to rob a third grocery store, also in Virginia Beach, Virginia. No property was stolen because the robbery was interrupted by the store manager. During this attempt, Mr. Doyle discharged a firearm, injuring the manager. In his Plea Agreement, Petitioner agreed, as the government recognized this to be an element of the offense, that the grocery stores engaged in, and that the stores affected, interstate commerce. There was no agreement, or allegation, that the robberies had a substantial effect, or any effect, on interstate commerce. App. 12-16.

Basis for Federal Jurisdiction

This case is an appeal from a judgment in the United States Court of Appeals for the Fourth Circuit. The original basis of federal jurisdiction arose from an indictment against Petitioner charging him with violations of federal criminal laws (the Hobbs Act (18 U.S.C. § 1951) and 18 U.S.C. § 924(c)(1)(A)), in the United States District Court for the Eastern District of Virginia.

REASONS FOR THE GRANTING OF THE WRIT

I. The Courts of Appeals' Precedents Unconstitutionally Apply the Hobbs Act's Jurisdictional Element in Direct Conflict with this Court's Holdings and Rationale in *Morrison* and *Lopez*.

Mr. Doyle submits that contrary to this Court's holdings in *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the United States Court of Appeals for the Fourth Circuit, as well as all other circuits, continue to adhere to an outdated analysis. The courts of appeals continue to hold that intrastate robberies that have no more than a potential *de minimis* effect on interstate commerce are subject to federal jurisdiction. This rule is inconsistent with this Court's holdings that preclude Congress's ability to criminalize local violent crimes through the Commerce Clause, and is further inconsistent with the Court's holdings that Congress's ability to regulate purely intrastate activities is subject to a showing that those activities substantial effect interstate commerce.

Mr. Doyle submits that Congress does not have plenary police power to criminalize local robberies, nor should it be interpreted to permit federal prosecution of all grocery store robberies.

In 1946, Congress passed the Hobbs Act, now codified at 18 U.S.C. § 1951, which sought to criminalize an act that "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do . . . ." (§ 1951(a)). Commerce is defined by the Hobbs Act as, effectively, "all . . . commerce over which the United

States has jurisdiction." *See* § 1951 (b)(3). Congress has jurisdiction to regulate "commerce with foreign nations, and among the several states, and with the Indian tribes." *See* U.S. CONST. art. I, § 8, cl. 3 ("the Commerce Clause").

Nowhere does the Hobbs Act clearly seek to criminalize intrastate robberies. Moreover, nowhere in the Hobbs Act or its legislative history did Congress indicate an intent to criminalize intrastate robberies or extortion due to any particularized aggregate effect of robberies on interstate commerce. It is not for the courts to make this leap.

The Hobbs Act's text must be read in conjunction with the Tenth Amendment, which provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." U.S. CONST. amend. X.

In the decades following passage of the Hobbs Act, the United States courts of appeals unanimously determined that any intrastate robbery, with any potential *de minimis* effect on interstate commerce, was sufficient to come within the ambit of the Hobbs Act.

In 1995, this Court sought to define the limits of Congress's authority to criminalize all criminal conduct under the auspices of the Commerce Clause and determined that there are boundaries that the federal government must observe and that it cannot regulate certain conduct that traditionally remains within the exclusive domain of the fifty states.

In *United States v. Morrison*, the Court held that:

> "Congress [cannot] regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce. The Constitution requires a distinction between what is truly national and what is truly local."

See United States v. Morrison, 529 U.S. 598, 617-18 (2000).

Notwithstanding this holding, the Fourth Circuit (as well as the other circuits) continue to hold that the Hobbs Act permits prosecution of local robberies because "taken in the aggregate, [they] substantially impact[ ] interstate commerce, [and] the minimal effects standard does not contravene the teachings of Lopez and Morrison." *See United States v. Williams*, 342 F.3d 350, 354 (4th Cir. 2003); *see also*, e.g., *United States v. Guerra*, 164 F.3d 1358, 1361 (11th Cir. 1999) ("an individual defendant's conduct need not substantially affect commerce precisely because the Hobbs Act regulates general conduct—robberies and extortion—which in the aggregate affects commerce substantially"); *see also United States v. Capozzi*, 347 F.3d 327, 335-36 (1st Cir. 2003); *United States v. Clausen*, 328 F.3d 708, 710-11 (3d Cir. 2003); *United States v. Fabian*, 312 F.3d 550, 554-55 (2d Cir. 2002); *United States v. Gray*, 260 F.3d 1267, 1272-76 (11th Cir. 2001); *United States v. Morris*, 247 F.3d 1080, 1085-87 (10th Cir. 2001); *United States v. Peterson*, 236 F.3d 848, 851-52 (7th Cir. 2001); *United States v. Smith*, 182 F.3d 452, 456 (6th Cir. 1999); *United States v. Harrington*, 108 F.3d 1460, 1465-66 (D.C. Cir. 1997); *United States v. Atcheson*, 94 F.3d 1237, 1241-43 (9th Cir. 1996).

The Fifth Circuit maintains the same precedent as the other circuits by default, due to an evenly divided court sitting *en banc*. *See United States v. McFarland*, 311 F.3d 376, 409 (5th Cir. 2002) (en banc) (per curiam) (Garwood, J.,

dissenting) (dissenting on the basis that the Hobbs Act's jurisdictional element should require substantial effects on interstate commerce).

There is no legislative history or text in the Hobbs Act claiming any Congressional finding that, in the aggregate, *intra*state robberies and extortion substantially affect *inter*state commerce.

Mr. Doyle submits below why the analysis of the courts of appeals and application of the "*de minimis* effects" rule are violative of the Constitution and the holdings in *Lopez* and *Morrison*.

A. Congress Does Not Have Plenary Police Authority to Regulate Traditionally Local Violent Crimes.

"Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution. 'The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written.'" *United States v. Morrison*, 529 U.S. 598, 607 (2000) (quoting *Marbury v. Madison*, 1 Cranch 137, 176 (1803) (Marshall, C. J.)).

The robbery of a retail grocery store cannot be regulated by Congress, as such a robbery is truly local and not national. As the Court held in *United States v. Morrison*:

> "Congress [cannot] regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce. The Constitution requires a distinction between what is truly national and what is truly local." (emphasis added).

529 U.S. at 617—618 (2000).

In coming to its conclusion in *Morrison,* the Court expressly cautioned that

"even under our modern, expansive interpretation of the Commerce Clause, Congress's regulatory authority is not without effective bounds." *Morrison*, 529 U.S. at 608 (citing *Lopez*, 514 U.S. at 557).

"[T]hus far in our Nation's history [Supreme Court] cases have upheld Commerce Clause regulation of *intrastate* activity only where that activity is economic in nature." *United States v. Morrison*, 529 U.S. 598, 613 (2000) (emphasis added).

> "For nearly two centuries it has been "clear" that, lacking a police power, 'Congress cannot punish felonies generally.' *Cohens v. Virginia*, 6 Wheat. 264, 428, 5 L.Ed. 257 (1821). A criminal act committed wholly within a State 'cannot be made an offence against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States.' *United States v. Fox*, 95 U.S. 670, 672, 24 L.Ed. 538 (1878)."

Bond v. United States, 134 S. Ct. 2077, 2086 (2014).

In *United States v. Lopez*, the Court also warned that:

> "the scope of the interstate commerce power `must be considered in the 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 at 557 (quoting *Jones & Laughlin Steel*, 301 U.S. 1, 37 (1937)).

The robbery of a grocery store is a criminal act committed wholly within a state and is in an area of law traditionally and particularly viewed as within the sole province of the States - to the exclusion of Federal regulation. *See Morrison*, 529 U.S. 598, 618 (2000) ("[W]e can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the

suppression of violent crime and vindication of its victims.").

B. Robbery Is Not an Economic Activity.

Robbery is not "economic" activity subject to aggregation. The dictionary defines "economic" as "relating to, or concerned with the production, distribution and consumption of commodities." Webster's Third New International Dictionary 720 (1981).

This Court has permitted aggregation of an activity to determine substantial effects on interstate commerce when Congress has created a federal regulatory scheme related to a particular economic market or protection of a particular economic activity. *See also*, e.g., *Wickard v. Filburn,* 317 U.S. 111 (1942) (permitting the outer limits of Commerce Clause power as it pertains to the personal production of a regulated commodity, i.e., wheat); *see also Gonzalez v. Raich,* 545 U.S. 1 (2005) (concerning federal regulatory scheme pertaining to the interstate drug market and regulation of personal production and consumption of a regulated commodity, i.e., marijuana); *see also Taylor v. United States*, 579 U.S. 301, 313 (2016) (Thomas, J. dissenting) ("Robbery is not buying, it is not selling, and it cannot plausibly be described as commercial transaction (trade or exchange or value)."). Robbery is not a commodity and there is no market for the sale, production, or consumption of robbery.

"Economic activity", by common parlance and understanding, is related to the voluntary and willing exchange and trade in markets and industry — and does not include taking property against another's will by violence, force or threat.

The Hobbs Act, therefore, as applied to a garden variety robbery of a retail

store, is categorically outside of Congress's authority because the Act represents Congress's improper attempt to "regulate noneconomic, violent criminal conduct." *See Morrison*, 529 U.S. at 617.

In circumstances such as the Petitioner's, application of the Hobbs Act under the *de minimis* standard promulgated by the courts of appeals does precisely what the Court warned against in *Lopez*—it obliterates any meaningful distinction between what is national and what is truly local—a distinction that is required to protect the general police powers of the States, which are capable of prosecuting such routine criminal activity.

Because *Morrison* categorically holds that Congress cannot regulate noneconomic violent crimes, the *de minimis* effects test employed by the courts of appeals is flawed and exceeds the bounds of what the Constitution permits.

There is also no data that suggests that robberies in the aggregate have any effect on interstate commerce.

II. The Hobbs Act, by Its Plain Text, Violates the Supreme Court's Substantial Effects Test by Criminalizing Local Individual Activity that May Affect Commerce "In Any Way or Degree".

If the text of the Hobbs Act itself is interpreted broadly[1], as the courts of appeals have uniformly done, to include all robberies that have any *de minimis* effect on interstate commerce, then the statutory language itself violates the substantial effects test and is unconstitutional.

On its face, the language is extremely broad: "Whoever *in any way or degree*

[1] We submit that such a broad interpretation, as applied by the courts of appeals, is also contrary to the Rule of Lenity.

obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery" has committed a federal crime. 18 U.S.C. § 1951(a). If also broadly interpreted, the plain text of the Hobbs Act does precisely what this Court cautioned Congress not to do — criminalize local crimes if such crimes have "any effect" on interstate commerce. Such a plenary police power is unsustainable under the Constitution and our system of Federalism.

Even if one assumes that robbery were an "economic activity", Congress does not have absolute authority to regulate all economic activities. Under *Lopez* and *Morrison*, Congress has no authority to regulate a purely intrastate activity that "in any way" affects commerce — it only has the authority to regulate intrastate activities that "substantially affect" interstate commerce. *Lopez*, 514 U.S. at 559.

This Court noted in *Lopez* that precedent "[had] not been clear whether an [intrastate] activity must 'affect' or 'substantially affect' interstate commerce." *Id.* In *Lopez* the Court went on to hold that there must be a substantial effect:

> "Congress' commerce authority includes the power to regulate those [intrastate] activities having a substantial relation to interstate commerce . . . i.e. those [intrastate] activities that substantially affect interstate commerce . . . the proper test requires an analysis of whether the regulated activity 'substantially affects' interstate commerce."

Lopez, 514 U.S. at 558-59.

There are no Congressional findings, and there is no evidence in the Congressional record, that Congress made a determination that intrastate robberies constituted a class of activity nationwide that substantially affected interstate commerce.

To the contrary, the record reflects that Congress considered discrete types of conduct that were directly related to interstate commerce and considered discrete types of conduct that would not be interstate commerce. *See* Argument, Sec. III, *infra.*

Although the courts of appeals (without reference to any Congressional findings) have relied on perceived aggregate effects of robberies to determine that Congress has the authority to regulate all robberies[2], this argument is flawed because (1) robbery is not an "economic activity" that can be aggregated— it is a local violent crime (*see Morrison*, 529 U.S. at 613); and (2) Congress made no findings about the aggregate effect of intrastate "robbery" on commerce. The courts cannot substitute themselves as a legislature.

The statute speaks of robbery and extortion, and each subset of crime can be committed in a variety of ways (conspiracies, threats, attempts, fear, actual force, etc.). Without Congressional findings, it is not clear what or how Congress would have aggregated such crimes, if at all. It is not the bailiwick of the courts to fill in the gaps.

Furthermore, even if Congress made voluminous findings, Congress can only go so far and cannot intrude upon those powers constitutionally reserved for the states, such as the general police power.

In *Morrison*, this Court disclaimed attempts to use the aggregate effects test for violent crimes. 529 U.S. at 617. Congress had made specific findings that

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[2] See, e.g., *United States v. Guerra*, 164 F.3d at 1361 (11th Cir. 1999) ("an individual defendant's conduct need not substantially affect commerce precisely because the Hobbs Act regulates general conduct—robberies and extortion—which in the aggregate affects commerce substantially").

domestic violence cost the economy billions of dollars every year. This Court held that these findings were insufficient to grant Congressional authority over these domestic violence crimes, which are local crimes traditionally prosecuted by the States - not commercial activity. *Morrison* at 614, 617-18.

"Such exclusions come into sight when the activity regulated is not itself commercial or when the States have traditionally addressed it in the exercise of the general police power, conferred under the state constitutions but never extended to Congress under the Constitution of the Nation." *See Lopez*, 514 U.S. at 566.

Any crime can arguably have a substantial effect on the economy if it is aggregated. Traffic violations (which result in accidents, injuries, damages, and hamper the flow of commerce) and petty shoplifting likely have a greater aggregate economic effect than robberies; however, these activities are not federal crimes - nor do we want them to be.

Traffic infractions, petty larcenies, as well as robberies, are traditionally and appropriately addressed by the States.

III. Congress Did Not Intend Robbery of A Local Grocery Store to be a Federal Crime.

In passing the Hobbs Act, Congress did not make a clear statement of intent to intrude on the traditional police power of the states to prosecute intrastate robberies with a potential *de minimis* effect on interstate commerce. To the contrary, legislative history affirmatively shows that Congress never intended that the Hobbs Act would apply to a purely local robbery.

A. Without a Clear Statement of Congressional Intent to Override a Traditional State Police Power, a Federal Statute Cannot Be So Interpreted.

"Part of a fair reading of statutory text is recognizing that 'Congress legislates against the backdrop' of certain unexpressed presumptions." *Bond v. United States*, 134 S. Ct. 2077, 2088 (2014) (internal citations omitted). One of those presumptions is that ""'it is incumbent upon the federal courts to be certain of Congress's intent before finding that federal law overrides' " the "usual constitutional balance of federal and state powers."" *Bond v. United States*, 134 S. Ct. at 2089 (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991)).

The definition and punishment of local crimes has traditionally been reserved exclusively to the states under the police powers – the Federal government cannot exert a plenary police power over traditionally local crimes:

> "Perhaps the clearest example of traditional state authority is the punishment of local criminal activity. *United States v. Morrison*, 529 U.S. 598, 618, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000). Thus, "we will not be quick to assume that Congress has meant to effect a significant change in the sensitive relation between federal and state criminal jurisdiction." *Bass*, 404 U.S., at 349, 92 S.Ct. 515."

Bond, 134 S. Ct. at 2089.

If Congress intends to criminalize traditionally local crimes and ""'radically readjust[ ] the balance of state and national authority, those charged with the duty of legislating [must be] reasonably explicit'" about it." *Bond*, 134 S. Ct. at 2089 (quoting *BFP v. Resolution Trust Corporation*, 511 U.S. 531, 544 (1994)).

This Court "insist[s] on a clear indication that Congress meant to reach purely local crimes, before interpreting the statute's expansive language in a way that

intrudes on the police power of the States." *Bond*, 134 S. Ct. at 2090.

In the text of the Hobbs Act itself, Congress has made no clear indication that it meant to reach purely local crimes.

The text of the statute, in the context of the time in which it was drafted and passed (in the 1930s—40s), does not extend its reach beyond a narrower interpretation of "commerce." During that period, Congress and this Court understood the Commerce Power to extend to activities that directly affected the interstate flow of commerce, or activities that substantially affected the interstate flow of commerce. Congressional records reflect that between 1932 and 1946, Congress did not seek to include the *de minimis* effects on interstate commerce, such as robbery of a local store. *See*, e.g., *A.L.A. Schecter Poultry Corp. v. United States*, 295 U.S. 495 (1935) (cited in Congressional debates on the Hobbs Act at 91 Cong. Rec. 11844 (1945) (discussing *Schechter* and affecting poultry moving across state lines)); *see also* 91 Cong. Rec. 11910 (1945) (discussing that intrastate activities are only covered if they substantially affect interstate commerce).

The drafters of the United States Constitution resolved to limit Congressional authority through the Commerce Clause to true interstate commerce or activities that substantially affected such commerce. Intrastate commerce remained the province of the states.

A local crime, such as stealing money or property by violence, does not substantially affect interstate commerce. If the Framers of the Constitution determined that such activity should be subject to federal criminal enforcement, they

could have included such federal criminal authority in the Constitution.

Although the statute speaks of affecting commerce "in any way", the Act's definition of "commerce" limits such commerce to commercial activity "between" the states and on federal land. It also includes "all other commerce" over which it has jurisdiction. 18 U.S.C. § 1951(a)—(b). This last clause is not a clear statement that Congress intended to regulate all interstate commerce or local activities, including local crimes, that have a *de minimis* effect on interstate commerce; rather, the word jurisdiction is a limitation of the type of intrastate commerce that can be regulated, such as economic activities, not local crimes, that have a substantial effect on interstate commerce.

This Court embraced this principle when interpreting the Hobbs Act in *United States v. Enmons*, 410 U.S. 396 (1973). In *Enmons*, labor strikers were charged with extortion under the Hobbs Act when they committed the following acts of violence in furtherance of their attempts to gain high wages and employment benefits:

> "firing high-powered rifles at three Company transformers, draining the oil from a Company transformer, and blowing up a transformer substation owned by the Company. In short, the indictment charged that the appellees had conspired to use and did in fact use violence to obtain for the striking employees higher wages and other employment benefits from the Company."

United States v. Enmons, 410 U.S. at 398. Although on their face the broad Hobbs Act language of extortion (obtaining property and higher wages by use of force, violence, and threat) would seem to apply to these acts, this Court determined that they did not. In relying on their duty to interpret the statute so as not to disrupt the federal-state balance of power, the Supreme Court stated:

> "it would require statutory language much more explicit than that before us here to lead to the conclusion that Congress intended to put the Federal Government in the business of policing the orderly conduct of strikes. Neither the language of the Hobbs Act nor its legislative history can justify the conclusion that Congress intended to work such an extraordinary change in federal labor law *or such an unprecedented incursion into the criminal jurisdiction of the States.*"

Enmons, 410 U.S. at 411. (Emphasis supplied.)

In a concurrence, Justice Blackmun readily acknowledged his "visceral reaction to immaturely conceived acts of violence", but "[t]hat reaction on my part, however, is legislative in nature rather than judicial." *Enmons*, 410 U.S. at 412.

Justice Blackmun further noted that:

> "[t]his type of violence, as the Court points out, is subject to state criminal prosecution. That is where it must remain until the Congress acts otherwise in manner far more clear than the language of the Hobbs Act." *Id.*

To date, Congress has not acted more clearly. Justice Blackman also pointed out that reaching such local criminal activities through the Hobbs Act "necessarily means that the legislation would be enforced selectively or, at the least, would embroil all concerned with drawing the distinction between major and minor violence. That, for me, is neither an appealing prospect nor solid support for the position taken[3]." *Id.*

B. Legislative History Affirmatively Shows that Congress Did Not Intend for the Hobbs Act to Apply to Robbery of a Local Retail Business.

The legislative record, as well as the state of the law during the years the

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[3] The government had conceded that "incidental" and "low level" violence would not fall under the Act.

Hobbs Act was passed, demonstrate that Congress had no intention of regulating all robberies with any *de minimis* effect on commerce. Instead, Congress was focused on only direct and obvious effects on interstate commerce — robbery of interstate food deliveries; extortion of businesses producing goods for out-of-state shipment, for example.

The Hobbs Act began as § 2 of the Anti-Racketeering Act of 1934 ("the 1934 Act"). In 1946, the Hobbs Act was passed as an amendment to the 1934 Act in direct response to a Supreme Court case interpreting whether the 1934 Act applied to certain violent union activities.

In *United States v. Local 807*, 315 U.S. 521 (1942), the Court had held that the 1934 Act did not include violent activities of union members demanding pay from non-union members for offered services that were rejected. *Local 807*, 315 U.S. at 533—34. This was because the 1934 Act had an exception for obtaining wages as part of an employer-employee relationship.

The Hobbs Act was then submitted in direct response to the *Local 807* case and it removed the 1934 Act's exception regarding wages. *See Enmons*, 410 U.S. at 401—03. As such, the legislative history behind the predecessor 1934 Act is also instrumental to what activities Congress intended to criminalize through the Hobbs Act.

In considering the 1934 Act, the House Report on S. 2248 (which became the 1934 Act) provides the following description:

> "The antiracketeering bill would extend the Federal jurisdiction in those cases where racketeering acts ***are related to interstate commerce***

and are therefore of concern to the Nation as a whole."

H. Rep. 1833, 73rd Cong., 2nd Sess. (1934) (emphasis added). This type of discussion shows that Congress was not intending to employ an aggregate effects analysis - it was attempting to create a statute that criminalized certain activities on a case-by-case basis.

The Copeland Committee Report (the committee chiefly drafting the 1934 Act) contained various assertions regarding the limits of Federal authority. In discussing the "poultry racket" in New York City, the Committee reported that:

> "while some phases of the poultry racket ***were of a local nature and not within Federal jurisdiction***, the committee felt that insofar as the transportation and distribution of live poultry was interstate in character, the necessary legislation should be enacted." S. Rep. 1189, 75th Cong., 1st Sess. 18 (1937) (emphasis added).
>
> Concerning the "kick-back racket", "After a thorough study of the testimony given and the complaints made, the committee concluded that ***the majority of the cases presented were of a local nature and were not within the jurisdiction of the Federal Government***. But it was decided the committee could effectuate the purpose of certain Federal statutes concerning rates of wages to be paid on work done under Government contracts." *Id.* at 20 (emphasis added).
>
> "Demands in great numbers for all types of investigations, into all kinds of wrongs, reached the committee . . . ***The public generally seemed to be unaware of, or at least not alive to, the jurisdictional boundaries in this field created by the constitutional limitations on the power of Congress . . . It was clear that the committee was not intended as a superpolice, nor as a prosecuting or judicial body for the supervision . . . of local authorities***. On the contrary, the subcommittee was organized to consider ways and means by which the Federal Government might aid in the suppression of rackets and racketeering, and, therefore, ***its activity would have to be limited for the most part to matters falling within categories on interstate commerce and use of the mails.***" *Id.* at 2 (emphasis added).

As can be seen in the commentary above, at the time the 1934 Act was passed,

the Supreme Court's and Congress's interpretation of the limits of the Commerce Clause was much narrower than what it became in the following decades. As shortly thereafter as 1935, the case of *A.L.A. Schecter Poultry Corp. v. United States*, 295 U.S. 495 (1935) was decided, making clear the law at that time.

In *Schecter*, this Court "struck down regulations that fixed the hours and wages of individuals employed by an intrastate business because the activity being regulated related to interstate commerce only indirectly." *See Lopez*, 514 U.S. at 554—55 (citing *Schecter* 295 U.S. 495, 550 (1935)). "Activities that affected interstate commerce directly were within Congress's power; activities that affected interstate commerce indirectly were beyond Congress's reach . . . ." *Id. at 555.* "The justification for this formal distinction was rooted in the fear that otherwise 'there would be virtually no limit to the federal power and for all practical purposes we should have a completely centralized government.'" *Id.*

It was in this era that Congress drafted the 1934 Act that the Hobbs Act amended. The definition of "commerce" contained in the 1934 Act was not changed by the Hobbs Act's amendments.

Even in 1945, when the Hobbs Act's amendment to the 1934 Act was being discussed, Congress[4] recognized a cognizable limit on federal authority and did not intend that their definition of "commerce" apply to all businesses. Congress referred to the S*checter* case to demonstrate its understanding of the limits of federal power:

> Mr. GRANGER. This applies only to interstate commerce, does it not?
> Mr. SPRINGER. It applies to interstate commerce. . .

[4] Practically all discussion related to the Hobbs Act surrounded whether it applied to labor unions and strikes.

> Mr. GRANGER. It would not affect a farmer who picked up produce within his own State and delivered it within his own State? That would be intrastate commerce?
> Mr. SPRINGER. Yes.
> Mr. GRANGER. What is interstate commerce? Is a farmer who crosses the State line with his own property engaged in interstate commerce?
> Mr. SPRINGER. There is no doubt but that he is engaged in interstate commerce when he crosses a State line .
> Mr. ROBSION of Kentucky. A transaction within a State may be interstate commerce if it oppresses and interrupts seriously or in a substantial way goods moving from one State to another?
> Mr. SPRINGER. The gentleman is entirely correct. That has been defined by judicial decisions. 91 Cong. Rec. 11910 (1945).

Congressional discussions demonstrate an intent to apply its legislation only to conduct that either directly affected the interstate flow of commerce, or those intrastate activities that "seriously or in a substantial way" interrupted goods moving from one state to another.

Because Congress has made no clear statement that it intended the Hobbs Act to apply to the robbery of a local grocery store, the federal courts cannot interpret it to do so and must assume that Congress did not intend to intrude on this traditional State police power.

The robbery of a neighborhood store selling goods directly to local consumers is not the type of activity that the Hobbs Act was intended to reach. The Petitioner has been convicted of conduct that was never intended to be a federal crime under the Hobbs Act and his convictions under Counts 1-6 should be reversed and vacated.

CONCLUSION

For the reasons set forth herein, the petition for certiorari should be granted.

Dated: October 24, 2024

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