

No. _____

In the
Supreme Court of the United States

Dominique Kevion Drake,

Petitioner,

v.

United States of America,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the statute of conviction, Title 18, Section 1951 (The Hobbs Act), is facially unconstitutional?

PARTIES TO THE PROCEEDING

Petitioner is Dominique Kevion Drake, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Dominique Kevion Drake seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is No. 24-10079, (5th Cir. Oct. 8, 2024). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on October 8, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND RULES PROVISIONS

18 U.S.C. § 1951(a) provides:

(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 extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both

LIST OF RELATED PROCEEDINGS

1. *United States v. Dominique Kevion Drake*, 3:20-cr-00188-K-4). United States District Court, Northern District of Texas. Judgment entered January 17, 2024.
2. *United States v. Dominique Kevion Drake*, Fifth Circuit No. 24-10079, opinion dated October 8, 2024 (unpublished).

STATEMENT OF THE CASE

The Government named Petitioner (and co-defendants) in a four-count second superseding indictment alleging: (1) three violations of 18 U.S.C. § 1951, Interference with Commerce by Robbery (“Hobbs Act” violations)(counts 1, 2, and 4); and (2) one count of Using, Carrying, and Brandishing a Firearm During and in Relation to, and Possessing and Brandishing a Firearm in Furtherance of, a Crime of Violence and Aiding and Abetting, 18 U.S.C. § 924(c)(1)(A)(ii).

According to the indictment, in December 2019, Petitioner and his co-defendants attempted to rob, and later did rob, a Brinks armored car of ~ \$933,000.00. Petitioner pleaded guilty to all the charges in open court without benefit of plea agreement.

Basic Facts. Petitioner signed a written Factual Résumé in which he confessed facts to support the charged offenses:

Beginning no later than November 2019 and continuing through on or about February 18, 2020, in the Dallas Division of the Northern District of Texas and elsewhere, Dominique Kevion Drake and others knowingly, intentionally, and unlawfully combined, conspired, confederated, and agreed, together and with each other, to commit a certain offense against the United States, to-wit: interference with commerce by robbery, in violation of 18 U.S.C. § 1951(a), a crime of violence. More specifically, Mr. Drake and others conspired to unlawfully take and obtain personal property, consisting of United States currency, from the person and in the presence of an employee of Brink's, Incorporated United States in his capacity as an employee of said business and against his will by means of actual and threatened force, violence, and fear of immediate injury to his person, that is, by using and brandishing a firearm.

Mr. Drake also committed the offense of interference with commerce by robbery, in violation of 18 U.S.C. §§ 1951(a), on November 9, 2019, and December 21, 2019. Mr. Drake further attempted to commit the offense of interference with commerce by robbery, in violation of 18 U.S.C. §§1951(a) on December 14, 2019. Additionally, Mr. Drake committed the offense of using, carrying, and brandishing a firearm during and in relation to, and possessing and brandishing a firearm in furtherance of, a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii) and 2, on November 9, 2019, and December 21, 2019.

On August 19, 2022, the district court sentenced Petitioner to a total of 138 months' imprisonment and 3 years supervised release on each count, supervision to run concurrently. The court ordered joint and several restitution in the amount of \$799,221.00.

Appeal:

Petitioner appealed his Hobbs Act convictions secured under Title 18, U.S.C. 1951(a) to the United States Court of Appeals for the Fifth Circuit. But that court summarily rejected his argument that the statute is facially unconstitutional:

On appeal, Drake asserts that § 1951(a) is facially unconstitutional because it does not require proof of a substantial effect on interstate or foreign commerce. He concedes, however, that his argument is foreclosed by *United States v. Robinson*, 119 F.3d 1205, 1212-14 (5th Cir. 1997) and *United States v. Miles*, 122 F.3d 235, 240-41 (5th Cir. 1997), and that he raises this issue merely to preserve it for further review. The Government therefore has filed an unopposed motion for summary affirmance, or alternatively, for an extension of time to file a brief.

Because Drake is correct that his argument is foreclosed, *see United States v. Turner*, 674 F.3d 420, 443-44 & n.88 (5th Cir. 2012), summary affirmance is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the district court's judgment is AFFIRMED.

Opinion, at Appendix A.

REASON FOR GRANTING THIS PETITION

This Court's opinions in *United States v. Lopez*, *United States v. Morrison*, and *Jones v. United States*, compel the conclusion that Petitioner's statute of conviction, Title 18, Section 1951 (The Hobbs Act), is facially unconstitutional.

The Hobbs Act provides that any person “whoever 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 to do so” is subject to criminal penalties. 18 U.S.C. § 1951(a). According to its express terms, “commerce” means... all commerce between any point in a State...and any point outside thereof... .” 18 U.S.C. § 1951(b)(3). Interpreting this language, this court of appeals has held that the Hobbs Act thus requires proof of two essential elements: “(1) a robbery, act of extortion, or an attempt or conspiracy to rob or extort; and (2) an interference with interstate commerce.” *United States v. Robinson*, 119 F.3d 1205, 1212 (5th Cir. 1997), (citing *Stirone v. United States*, 361 U.S. 212, 218 (1960)).

In *Robinson*, that court also held that Hobbs Act prosecutions based upon local activity are valid “provided that the defendant's conduct is of a general type which, viewed in the aggregate, affects interstate commerce substantially.” *Robinson*, 119 F.3d at 1208. Furthermore, the *Robinson* Court also held in that “a robbery or extortionate act that depletes the assets of a commercial enterprise, impairing or delaying its ability to buy goods or services in interstate commerce” is sufficient under the Hobbs Act. *Id.* at 1212. See also *United States v. Hebert*, 131 F.3d 514, 523 n.8

(5th Cir. 1997).

But this Court, in *United States v. Lopez*, seemingly cast doubt upon such a broad interpretation by concluding that before Congress may punish conduct that involves neither the channels of interstate commerce, the instrumentalities of interstate commerce, nor persons or things in interstate commerce, such conduct must have a “substantial” effect on interstate commerce. 514 U.S. 549, 551, 559 (1995). (In that case, which involved the Gun-Free School Zones Act of 1990, 18 U.S.C. § 922(q), the Court held that the Commerce Clause does not authorize Congress to criminalize the purely local possession of a firearm within a school zone. *Id.*)

Shortly afterwards, and continuing in this vein, this Court further illustrated why the Court’s understanding of the “in commerce” element in 18 U.S.C. § 1951 may be due for an overhaul (and a correction). First, in *United States v. Morrison*, the Court made clear that Congress cannot constitutionally regulate intrastate criminal conduct without a “substantial” effect on interstate commerce, even if such conduct, when considered in the “aggregate” would have such an effect:

We accordingly reject the argument that Congress may 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... . In recognizing this fact we preserve one of the few principles that has been consistent since the Clause was adopted. The regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States.

529 U.S. 598, 617-18 (2000) (citations omitted).

And then the same year, in *Jones v. United States*, the Court held that the Constitution did not allow for Title 18, U.S.C. § 844(i), to criminalize the arson of a private residence, noting specifically that the fact that supplies have moved in interstate commerce channels for the ultimate production of private homes does not and cannot constitutionally establish a federal jurisdictional hook. 529 U.S. 848, 852-59 (2000).

At a minimum, *Lopez*, *Morrison*, and *Jones*, compel the conclusion that the Hobbs Act cannot constitutionally be construed cover to local robbery or extortion spree.

Petitioner submits that were a “substantial” effect held to be a prerequisite to the constitutional prosecution of robbery or extortion under 18 U.S.C. § 1951(a), then the statute would be unconstitutional on its face because it does not contain a requirement of “substantiality,” but rather only *some* effect on interstate or foreign commerce. And were this Court to so hold, it would necessarily reverse Petitioner’s convictions.

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 6th day of January, 2025.

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