No. 24-_____

IN THE

Supreme Court of the United States

DEONTA BROWN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner and an accomplice were convicted of robbery of a Waffle House restaurant under the Hobbs Act, 18 U.S.C. § 1951(a), and convicted of using a firearm in relation to that robbery, in violation of 18 U.S.C. § 924(c). During that robbery, petitioner and his accomplice took less than $100 in cash from the cash register and a restaurant employee's cellular phone worth $130. Although the plea agreement stipulated to an element of § 1951(a) – that the robbery of the Waffle House "affect[ed]" interstate commerce in an unspecified manner – the evidence in petitioner's case indisputably shows that the robbery did not in any way affect any channel or instrumentality of interstate commerce or the interstate movement of money or goods. Instead, the robbery merely involved a brief, localized act of threatened violence and petty theft, which by itself did not *substantially* affect interstate commerce.

The questions presented in this case are:

I.

In order to convict a defendant of robbery of a local business establishment under the Hobbs Act, must the prosecution prove beyond a reasonable doubt that the robbery itself *substantially* affected interstate commerce – without considering the "aggregate" effect on interstate commerce of countless other, unspecified robberies of similar business establishments? This Court reserved this question in *Taylor v. United States*, 579 U.S. 301, 310 (2016).

II.

Should this Court reconsider its precedent broadly interpreting Article I, § 8, Clause 3 of the U.S. Constitution, as applied to congressional regulation of *intrastate* activities that do not affect the instrumentalities or channels of interstate commerce, to reflect the intent of the Framers of the Constitution?

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The decision of the Fifth Circuit affirming petitioner's judgment of conviction (Appendix) is unpublished but is available at 2025 WL 2025 WL 545709.

JURISDICTION

The Fifth Circuit issued its opinion and entered judgment on February 19, 2025. This petition was filed within 90 days of that date. This Court has jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Interstate Commerce Clause

Congress may "regulate [c]ommerce . . . among the several [s]tates." U.S. Const., Art. I, § 8, cl. 3.

Hobbs Act

The Hobbs Act provides in pertinent part:

> 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.

18 U.S.C. § 1951(a); *see also* 18 U.S.C. § 1951(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

A. Procedural Background

On November 29, 2023, the grand jury returned a six-count superseding indictment charging petitioner with three counts of robbery in October 2019, in violation of 18 U.S.C. § 1951 (Counts 1, 3, and 5), and three counts of possessing a firearm in connection with those three alleged robberies, in violation of 18 U.S.C. § 924(c) (Counts 2, 4, and 6). ROA.94.[1]

Pursuant to a written plea agreement, ROA.261 *et seq.*, petitioner pleaded guilty to Counts One and Two. ROA.197 *et seq.* The Honorable George C. Hanks, Jr., U.S. District Judge, presiding, accepted petitioner's guilty plea and adjudged him guilty of those two charges. ROA.211-12. Judge Hanks sentenced petitioner to 78 months in federal prison on Count One and a consecutive sentence of 84 months in federal prison on Count Two – for a total prison sentence of 162 months – to be followed by three years of supervised release. ROA.123, 243.

Petitioner timely appealed his convictions to the Fifth Circuit, which affirmed his convictions. App. No petition for rehearing was filed.

B. Relevant Facts

The factual basis in the written plea agreement provided as follows:

[1] "ROA" is the Fifth Circuit's record on appeal.

> The events in question took place in the Southern District of Texas on or about October 24, 2019.
>
> At all times applicable, Waffle House [was] a Norcross, Georgia-based restaurant chain with locations throughout the United States. Waffle House is engaged in a business that buys perishable and non-perishable goods, sells food items, and transacts its business in United States currency. The goods and currency of Waffle House's business travel in interstate commerce and affect interstate commerce.
>
> On October 24, 2019, Defendant Deonta Brown, together with an accomplice, entered the Waffle House restaurant located at 1208 Wilson Road in Houston, Texas within the Southern District of Texas. The accomplice brandished a silver pistol he had been hiding in his waistband at the employees on duty. Brown and his accomplice demanded that the employees give them their phones, which one employee did, against that employee's will. The employee's phone was worth approximately $130. Brown and his accomplice then asked, "Where's the money at?" An employee went to the restaurant's cash register and opened it. Brown and his accomplice together grabbed United States currency from the register and fled the scene. Brown and his accomplice together stole approximately $100 in cash. The employee victims were in fear of their lives by the actions of Brown and his accomplice brandishing a firearm during the course of the robbery. The robbery and theft of the United States currency from the employees at the Waffle House restaurant affected interstate commerce.

ROA.267-68. The subsequent presentence report, which the district court adopted, also recounted essentially the same facts but noted that petitioner and his accomplice took $92. ROA.280.

On appeal to the Fifth Circuit, petitioner contended that the factual basis offered in support of his guilty plea to the charges was legally insufficient yet acknowledged that his argument was foreclosed by Fifth Circuit precedent. In particular, petitioner contended that:

> The jurisdictional interstate commerce element in 18 U.S.C. § 1951(a) only provides that the federal statute reaches those robberies (and conspiracies to commit robbery) that affect interstate commerce but

says nothing about how significant an effect that the Constitution requires. *See United States v. Bishop*, 66 F.3d 569, 594 (3d Cir. 1995) (Becker, J., dissenting) (noting that "a jurisdictional element functions only to limit the regulation to interstate activity or to ensure that the intrastate activity which is regulated satisfies" the constitutional requirements). As the Supreme Court recognized in [*United States v.*] *Lopez* [514 U.S. 549 (1995),] the purpose of a jurisdictional element is to "ensure, through case-by-case inquiry, that the [regulated activity] affects interstate commerce." 514 U.S. at 561. Yet *Lopez* does not permit the conclusion that Congress has "the power to provide for a lesser relation to interstate commerce . . . simply by including a jurisdictional provision." *United States v. McFarland*, 311 F.3d 376, 395-96 (5th Cir. 2002) (en banc) (Garwood, J., dissenting, joined by seven other circuit judges) . . . .

To satisfy the jurisdictional element of a statute, the prosecution's evidence must show that the effect on interstate commerce from activity solely occurring within a single state must be "substantial" in a given case. *See Lopez*, 514 U.S. at 558-59; *see also United States v. Baylor*, 517 F.3d 899, 903-04 (6th Cir. 2008) (Suhrheinrich, J., concurring) ("By continuing to allow a *de minimis* standard for individual violations of the Hobbs Act, we are essentially nullifying the 'substantial effect' test of *Lopez* and [*United States v.*] *Morrison* [529 U.S. 598 (2000)]."); *McFarland*, 311 F.3d at 377-410 (en banc) (Garwood, J., dissenting, joined by seven other circuit judges) (same); *United States v. Harrington*, 108 F.3d 1460, 1473-77 (D.C. Cir. 1997) (Sentelle, J., dissenting). In view of the small amount of money and property taken by appellant and his accomplice during the robbery – totaling $230 – the robbery's effect on interstate commerce was not substantial. Therefore, the factual basis of appellant's guilty plea is legally insufficient.

Appellant recognizes that prior panel decisions of this Court have held that only a "*de minimis*" effect on interstate commerce must be shown – based on the reasoning that an "aggregation" of all such robberies collectively affect interstate commerce in a "substantial" manner. *See, e.g.*, *United States v. Robinson*, 119 F.3d 1205 (5th Cir. 1997). Under those cases, there is a sufficient factual basis for appellant's convictions and his guilty plea is not involuntary. Appellant contends that such panel decisions are incorrect and should be overruled by the *en banc* court or Supreme Court.

Appellant's Opening Brief, No. 24-20266, 2024 WL 4555990, at *11-*13 (filed October 18, 2024).

The Fifth Circuit affirmed petitioner's conviction, stating:

> On appeal, Brown challenges the sufficiency of the factual basis regarding the interstate commerce element of § 1951(a), asserting that the taking of $100 in cash and a cell phone worth approximately $130 failed to establish a substantial effect on interstate commerce. He concedes, however, that his argument is foreclosed by *United States v. Robinson*, 119 F.3d 1205, 1212-14 (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 . . . .
>
> Because Brown is correct that his argument is foreclosed. . . . [T]he district court's judgment is AFFIRMED.

App. 1.

REASONS FOR GRANTING THE PETITION

This petition raises two important, related questions worthy of this Court's review: **first**, whether the Constitution affords Congress the authority to criminalize an *intrastate* robbery of a business establishment that only "affected" interstate commerce in a very attenuated manner (and only "substantially" affected interstate commerce if the miniscule effect on interstate commerce caused by the local robbery were to be "aggregated" with countless, unspecified other such intrastate robberies); and, **second**, whether this Court should overrule its Commerce Clause precedent that is inconsistent with the Framers' limited intent about Congress's authority to regulate intrastate activities that do not affect the channels or instrumentalities of interstate commerce.

I.

This Court Should Grant Certiorari to Address the Important Question Reserved in *Taylor v. United States*, 579 U.S. 301, 310 (2016).

The Hobbs Act prohibits a robbery that "in any way or degree obstructs, delays, or affects commerce . . . ." 18 U.S.C. § 1951(a). Six decades ago, this Court stated that § 1951(a) "speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence." *Stirone v. United States*, 361 U.S. 212, 215 (1960).

In the decades following *Stirone*, this Court clarified Congress's authority to regulate intrastate activities under the Commerce Clause. *See United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Morrison*, 529 U.S. 598 (2000). Although Congress may "regulate [c]ommerce . . . among the several [s]tates," U.S. Const. art. I, § 8, cl. 3, this Court has recognized that there are "outer limits" to its authority to do so. *Lopez*, 514 U.S. at 556-57; *see also Morrison*, 529 U.S. at 608 (Congress's "regulatory authority [under Commerce Clause] is not without effective bounds]"). In particular, for Congress to regulate economic activity occurring solely within a single state, this Court has held that such *intrastate* activity must have a "substantial" effect on interstate commerce, at least when the activity does not implicate "the use of the channels of interstate commerce" or "the instrumentalities of interstate commerce." *Lopez*, 514 U.S. at 558-59.

The jurisdictional element in § 1951(a) only states that the federal statute reaches those robberies that "affect" interstate commerce but says nothing about *how*

significant an effect that the Constitution requires. *See United States v. Bishop*, 66 F.3d 569, 594 (3d Cir. 1995) (Becker, J., dissenting) (noting that "a jurisdictional element functions only to limit the regulation to interstate activity or to ensure that the intrastate activity which is regulated satisfies" the constitutional requirements). As this Court recognized in *Lopez*, the purpose of a jurisdictional element is to "ensure, through case-by-case inquiry, that the [regulated activity] affects interstate commerce." 514 U.S. at 561. *Lopez* does not permit the conclusion that Congress has "the power to provide for a lesser relation to interstate commerce . . . simply by including a jurisdictional provision." *United States v. McFarland*, 311 F.3d 376, 395-96 (5th Cir. 2002) (en banc) (Garwood, J., dissenting, joined by seven other circuit judges); *see also Morrison*, 529 U.S. at 616 ("Under our written Constitution, . . . the limitation of congressional authority is not solely a matter of legislative grace[.]").

At the very least, in order to satisfy the jurisdictional element of the Hobbs Act, the prosecution's evidence must show that the effect on interstate commerce from an intrastate robbery *itself* was "substantial." *Lopez*, 514 U.S. at 558-59. "By continuing to allow a *de minimis* standard for individual violations of the Hobbs Act, [the federal courts, including the Fifth Circuit] are essentially nullifying the 'substantial effect' test of *Lopez* and *Morrison*." *United States v. Baylor*, 517 F.3d 899, 903-04 (6th Cir. 2008) (Suhrheinrich, J., concurring); *see also United States v. Rivera-Rivera*, 555 F.3d 277, 298 (1st Cir. 2009) (Lipez, J., dissenting); *United States v. McFarland*, 311 F.3d 376, 409-10 (5th Cir. 2002) (en banc) (Garwood, J., dissenting, joined by seven other circuit judges).

The factual basis of petitioner's plea agreement – describing a robbery of less than $100 in currency and a cell phone worth $130 from a business establishment that generally buys and sells goods in interstate commerce but that did not otherwise affect interstate commerce in any meaningful manner – fails to prove that the robbery *by itself* "substantially affected" interstate commerce as required by Article I, § 8, Clause 3 of the U.S. Constitution. *Cf. United States v. Zeigler*, 19 F.3d 486, 495-96 (10th Cir. 1994) (Ebel, J., dissenting) (contending that intrastate robberies of relatively small amounts of money – $150 to $1,500 – from stores engaged in interstate commerce failed to prove the interstate commerce element of a Hobbs Act robbery for each charge). If petitioner is correct, then he is actually innocent of the jurisdictional "commerce" element,[2] and his guilty plea was thus involuntary (because his plea was based on the belief, endorsed by the district court, that the evidence was sufficient to support his conviction).[3]

A majority of this Court in 2016 agreed with the "aggregation" analysis of an intrastate robbery of a drug dealer charged under the Hobbs Act but expressly reserved the question of whether there is sufficient evidence under the Act concerning a robbery of "some other type of business" when no direct and substantial effect on

[2] *See United States v. Davies*, 394 F.3d 182, 191-92 (3d Cir. 2005) (stating that, if a federal defendant could establish that the government had failed to prove the "interstate commerce" element of the federal arson statute, the defendant would be actually innocent of that offense); *Martin v. Perez*, 319 F.3d 799, 804 (6th Cir. 2003) (same).

[3] When a defendant who pleaded guilty was led to believe that innocent conduct was criminal – as petitioner was led to believe at the rearraignment about the Hobbs Act charge – then the plea was not a "voluntary and intelligent choice." *Bousley v. United States*, 523 U.S. 614, 618-19 (1998) ("[P]etitioner contends that the record reveals that neither he, nor his counsel, nor the court correctly understood the essential elements of the crime with which he was charged. Were this contention proved, petitioner's plea would be . . . constitutionally invalid.").

interstate commerce occurred. *See Taylor v. United States*, 579 U.S. 301, 310 (2016) ("Our holding today is limited to cases in which the defendant targets drug dealers for the purpose of stealing drugs or drug proceeds. We do not resolve what the Government must prove to establish Hobbs Act robbery where some other type of business or victim is targeted.").

Justice Thomas's dissenting opinion in *Taylor* – addressing the Hobbs Act's interstate commerce "jurisdictional" element generally (beyond the majority's specific discussion of cases involving a robbery of a drug dealer) – stated:

> The critical question in this case is whether the commerce definition's final clause [in 18 U.S.C. § 1951(a)] extends . . . to some intrastate activity. Given the limitations imposed by the Constitution, I would construe this clause not to reach such activity.
>
> As explained above, for the Hobbs Act to constitutionally prohibit robberies that interfere with intrastate activity, that prohibition would need to be "necessary and proper for carrying into Execution" Congress' power to regulate interstate commerce, Art. I, § 8, cls. 3, 18. . . . Punishing a local robbery – one that affects only intrastate commerce or other intrastate activity – cannot satisfy that standard. . . .
>
> Robberies that might satisfy [the Commerce Clause] would be those that affect the channels of interstate commerce or instrumentalities of interstate commerce. A robbery that forces an interstate freeway to shut down thus may form the basis for a valid Hobbs Act conviction. So too might a robbery of a truckdriver who is in the course of transporting commercial goods across state lines. But if the Government cannot prove that a robbery in a State affected interstate commerce, then the robbery is not punishable under the Hobbs Act. Sweeping in robberies that do not affect interstate commerce comes too close to conferring on Congress a general police power over the Nation.
>
> Given the Hobbs Act's text and relevant constitutional principles, the Government in a Hobbs Act robbery case (at least one that involves only intrastate robbery) must prove, beyond a reasonable doubt, that the defendant's robbery itself affected interstate commerce.

Taylor, 579 U.S. at 314-17 (Thomas, J., dissenting).

Petitioner's case presents this Court with an excellent vehicle to decide the important, open question reserved by this Court in *Taylor*. The Fifth Circuit found sufficient evidence of a "substantial" effect on interstate commerce based on (1) the fact that petitioner and his accomplice took around $100 in cash from the restaurant and a cellular telephone valued at $130; and (2) the fact that the restaurant engaged in business whereby money and goods generally "travel[led] in" and "affected" interstate commerce in some unspecified manner and that the robbery thus "affected" interstate commerce in at least some miniscule manner.

This Court should grant certiorari to decide whether evidence of an intrastate robbery of a business establishment that had goods and money that traveled in interstate commerce (unrelated to the robbery) – when the robbery *by itself* did not "substantially" affect interstate commerce – is sufficient to satisfy the interstate-commerce element of the Hobbs Act in view of Article I, § 8, clause 3.[4]

II.

This Court Should Grant Certiorari and Reconsider this Court's Commerce Clause Precedent Permitting Congress to Enact Legislation that Exceeds the Framers' Limited Vision of Congressional Power under Article I, Section 8, Clause 3.

"The Framers adopted the Commerce Clause for narrow purposes. They intended the commerce power to enable the national government to conduct a uniform

[4] If petitioner's conviction of the Hobbs Act charge is invalid, then so is his conviction under 18 U.S.C. § 924(c) because the latter depended on petitioner's criminal liability for the predicate Hobbs Act offense. *See United States v. Collins*, 40 F.3d 95, 101 (5th Cir. 1994) (reversing conviction under 18 U.S.C. § 924(c)(1) when evidence was insufficient to sustain an underlying Hobbs Act conviction).

trade policy with foreign nations, to establish domestic free trade, and to reduce interstate political conflict. These were the Framers' intentions, and there is no legitimate basis in the historical record for ascribing any more ambitious purpose to the Commerce Clause than these." Scott Boykin, *The Commerce Clause, American Democracy, and the Affordable Care Act*, 10 GEO. J. L. & PUB. POL'Y 89, 94-95 (2012).

During the past century, this Court has broadly interpreted the Commerce Clause to empower Congress to go well beyond the Framers' intent, including by permitting wholly *intrastate* crimes traditionally prosecuted in state courts, like the local robbery in petitioner's case, to be prosecuted in federal court as well. As Justice Thomas has stated:

> . . . Congress is responsible for the proliferation of duplicative prosecutions for the same offenses by the States and the Federal Government. . . . By legislating beyond its limited powers, Congress has taken from the People authority that they never gave. U.S. CONST., Art. I, § 8; *The Federalist* No. 22, p. 152 (C. Rossiter ed. 1961) ("all legitimate authority" derives from "the consent of the people" (capitalization omitted)). And the Court has been complicit by blessing this questionable expansion of the Commerce Clause. *See, e.g.*, *Gonzales v. Raich*, 545 U.S. 1, 57-74 (2005) (Thomas, J., dissenting). Indeed, it seems possible that much of Title 18, among other parts of the U.S. Code, is premised on the Court's incorrect interpretation of the Commerce Clause and is thus an incursion into the States' general criminal jurisdiction and an imposition on the People's liberty.

Gamble v. United States, 587 U.S. 678, 710 n.1 (2019) (Thomas, J., concurring).

Justice Thomas has been particularly critical of this Court's decisions that have permitted Congress to regulate intrastate activities that are deemed to have a "substantial" effect on interstate commerce but that do not implicate the channels or instrumentalities of interest commerce. *See, e.g.*, *United States v. Morrison*, 529 U.S. 598, 627 (2000) (Thomas, J., concurring) ("[T]he very notion of a 'substantial effects'

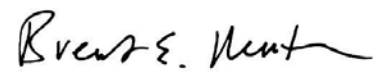
test under the Commerce Clause is inconsistent with the original understanding of Congress' powers and with this Court's early Commerce Clause cases. By continuing to apply this rootless and malleable standard, however circumscribed, the Court has encouraged the Federal Government to persist in its view that the Commerce Clause has virtually no limits. Until this Court replaces its existing Commerce Clause jurisprudence with a standard more consistent with the original understanding, we will continue to see Congress appropriating state police powers under the guise of regulating commerce.").

Petitioner's case presents this Court with an excellent vehicle to reconsider this Court's precedent permitting Congress to exercise broad authority under Article I, § 8, Clause 3 to regulate commerce when the activity at issue does not meaningfully affect the channels or instrumentalities of interstate commerce – which petitioner's actions clearly did not. This Court should grant certiorari and overrule its precedent broadly interpreting the Commerce Clause beyond the Framers' intent.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the Fifth Circuit's judgment.

Respectfully submitted,



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