

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

SHAY PANIRY,

Petitioner,

- v -

UNITED STATES OF AMERICA,

Respondent.

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

TODD W. BURNS
Burns & Cohan, Attorneys at Law
1350 Columbia Street, Suite 600
San Diego, California 92101
619-236-0244

Counsel for Petitioner

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF AUTHORITIES.....	ii
QUESTION PRESENTED FOR REVIEW.....	prefix
PETITION FOR WRIT OF CERTIORARI.....	1
OPINION BELOW.	1
JURISDICTION.....	1
RELEVANT STATUTORY PROVISIONS.....	2
STATEMENT OF THE CASE.	2
I. District Court Proceedings.....	2
II. Ninth Circuit Panel Opinion.	3
REASONS FOR GRANTING THE WRIT.....	4
CONCLUSION.	6
APPENDIX	
PROOF OF SERVICE	

TABLE OF AUTHORITIES

Page

FEDERAL CASES

<i>Bond v. United States</i> , 134 S. Ct. 2077 (2014).....	6
<i>Gonzales v. Raich</i> , 545 U.S. 1 (2005).....	4
<i>Loughrin v. United States</i> , 134 S. Ct. 2384 (2014).....	6
<i>Taylor v. United States</i> , 136 S. Ct. 2074 (2016).....	4, 5
<i>United States v. Collins</i> , 40 F.3d 95 (5 th Cir. 1994)	6
<i>United States v. Paniry</i> , ___ Fed. Appx. ___, 2017 WL 4329741 (9th Cir. 2017)	1, 3
<i>United States v. Perrotta</i> , 313 F.3d 33 (2 nd Cir. 2002).	5
<i>United States v. Wang</i> , 222 F.3d 234 (6 th Cir. 2000)	5

FEDERAL STATUTES

18 U.S.C. §1951.....	2, 3
28 U.S.C. §1254(1).	1

FEDERAL RULES

S. Ct. R. 10(a).	4
-----------------------	---

QUESTION PRESENTED FOR REVIEW

Is a purely intrastate threat, backed up by purely intrastate vandalism to a car, sufficient to establish the effect on interstate commerce element for Hobbs Act extortion under 18 U.S.C. §1951(a)?

IN THE SUPREME COURT OF THE UNITED STATES

SHAY PANIRY,

Petitioner,

- v -

UNITED STATES OF AMERICA,

Respondent.

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

Shay Paniry respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on September 29, 2017.

OPINION BELOW

On September 29, 2017, a Ninth Circuit panel filed an unpublished opinion affirming Paniry's conviction for, among other things, Hobbs Act extortion under 18 U.S.C. §1951(a). *See United States v. Paniry*, __ Fed. Appx. __, 2017 WL 4329741 (9th Cir. 2017) (attached in Appendix). Mr. Paniry did not file a petition for rehearing.

JURISDICTION

The Court of Appeals filed its opinion on September 29, 2017. This Court has jurisdiction under 28 U.S.C. §1254(1).

RELEVANT STATUTORY PROVISIONS

The Hobbs Act, 18 U.S.C. §1951(a), states in relevant 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.

Section 1951(b)(3) defines commerce as follows:

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

I. District Court Proceedings

Following trial Shay Paniry was convicted of drug trafficking, money laundering, and extortion under 18 U.S.C. §1951(a) (the Hobbs Act). The criminality underlying the government’s case was manufactured by two undercover officers, DEA Agent Willivan Rojas and Montebello Police Department Detective Roy Camuy. At the center of these fictitious crimes were Moshe Matsri and Youval Geringer-Ganor, the indictment’s lead defendants. The trial evidence related to Paniry showed mostly that he was Matsri’s occasional bag-man. The evidence relating to the extortion is as follows.

On May 2, 2013, the case’s lead defendant, Matsri, told undercover officer Camuy that if Camuy ever needed help collecting a debt, he (Matsri) could handle the situation “nicely, no problem.”

On July 8, 2013, Camuy asked Matsri if he could help collect \$40,000 from a “cocaine customer” of his and Rojas’s named “Vegas Chad.” Matsri agreed to vandalize “Chad’s” car while it was parked at “Chad’s” girlfriend’s home in Los Angeles. Camuy provided Matsri the fictitious girlfriend’s address and the car’s description.

The next night, at Matsri’s direction, two men drove to that address and vandalized the car with a tire iron. Afterwards, and also at Matsri’s direction, Paniry telephoned “Chad” and threatened (to the FBI agent who answered and was playing the role of Chad) that if he did not call Jose and make arrangements to pay the money he owed, Paniry would come to “Chad’s” home in Marina del Rey, California, and do to his face what was done to his car.

II. Ninth Circuit Panel Opinion

On appeal, Paniry argued that the evidence with respect to the vandalism of “Chad’s” car was insufficient to establish the effect on interstate commerce element for Hobbs Act extortion under §1951(a). An element of §1951(a) is that the extortion must “obstruct[], delay[], or affect[] commerce” “Commerce” has several statutory definitions, but the government proceeded on the definition requiring it to show an effect on interstate commerce. *See* 18 U.S.C. § 1951(b)(3). Paniry argued that because the car vandalism was carried out in California, the threat was made in California, and the “victim” was believed to be in California, no evidence established an effect on interstate commerce. The Ninth Circuit rejected Paniry’s argument, stating:

[Undercover agent] Rojas testified that he represented to Matsri that Vegas Chad was his cocaine customer. The intrastate trade in cocaine is “commerce over which the United States has jurisdiction,” and an “attempt[] to affect even the intrastate sale” of cocaine is therefore an “attempt[] to affect commerce over which the United States has jurisdiction.” *Taylor v. United States*, __ U.S. __, 136 S. Ct. 2074, 2080 (2016). Thus, a rational trier of fact could have found beyond a reasonable doubt that Paniry’s attempt to collect a debt from Vegas Chad met the interstate commerce element of 18 U.S.C. §1951(a).

Paniry, 2017 WL 4329741, *2.

There was no evidence that Paniry knew or believed that “Vegas Chad” was a (fictitious) “cocaine customer” of Agent Rojas’s, or that Paniry believed that the debt being collected was related in any way to drugs. More important for present purposes, the Ninth Circuit’s holding means that any time a drug dealer threatens a customer, he has committed Hobbs Act extortion.

REASONS FOR GRANTING THE WRIT

The Ninth Circuit panel’s holding conflicts with the law of several other circuits and is not supported by this Court’s holding in *Taylor*. The panel’s holding also amounts to a broad expansion of federal jurisdiction under the Hobbs Act, and thus presents an issue of exceptional importance. For these reasons the petition should be granted. *See* S. Ct. R. 10(a).

In *Taylor v. United States*, 136 S. Ct. 2074, 2077 (2016), the Court addressed whether the Hobbs Act’s commerce element is satisfied “when a defendant commits a robbery that targets a marijuana dealer’s drugs or drug proceeds.” The Court held that the answer is yes because: (1) the holding in *Gonzales v. Raich*, 545 U.S. 1 (2005), indicates that the Commerce Clause gives Congress authority to regulate the national market for marijuana, including the authority to proscribe the purely intrastate production, possession, and sale of such; thus (2) it follows that Congress may also regulate intrastate drug theft under the Hobbs Act. *See Taylor*, 136 S. Ct. at 2088. The Court explained that because it concluded in *Raich* that “[t]he production, possession, and distribution of controlled substances constitute a ‘class of activities’” that are economic in nature, it “follows as a matter of logic that a robber who affects or attempts to affect even the intrastate sale of marijuana grown within the State affects or attempts to affect commerce over which the United States has jurisdiction.” *Id.* at 2080. Accordingly, the Court held that §1951(a)’s commerce element is satisfied when a defendant attempts “to rob a drug dealer of his drugs or proceeds.” *Id.* at 2078. The

Court noted, however, that its “holding [in *Taylor*] is limited to cases in which the defendant targets *drug dealers* for purposes of *stealing drug or drug proceeds*.” *Id.* at 2082 (emphasis added).

Setting aside that Paniry’s case involved extortion, not robbery, it is evident that the holding in *Taylor* does not apply. To begin with, the (fictitious) target of the extortion, “Vegas Chad,” was not claimed to have been a drug dealer, he was supposedly a drug customer’s of Agent Rojas and Officer Camuy. Furthermore, there was no indication that the money sought to be collected was supposedly drug proceeds, or even that the debt owed was a drug debt. Accordingly, all the evidence showed was that there was an effort to collect a debt from “Vegas Chad,” and that Agent Rojas claimed that “Vegas Chad” was a cocaine customer of his, but not that the debt was a drug debt. Under these circumstances, the Ninth Circuit panel opinion amounts to holding that any extortion directed at collecting any debt is punishable under the Hobbs Act. Such a sweeping extension of Hobbs Act liability is not constitutionally permissible, and is not sanctioned by *Taylor* or any of this Court’s other precedent in this area. *See, e.g., Taylor*, 136 S. Ct. at 2082-85 (Thomas, J., dissenting) (pointing out that “Congress has limited authority over crime,” and the Hobbs Act does not extend to purely intrastate economic activity).

Furthermore, the extension of Hobbs Act liability in this case is contrary to a wealth of case law from other circuits that indicates there must truly be an effect on interstate commerce to satisfy that element. *See, e.g., United States v. Perrotta*, 313 F.3d 33, 38 (2d Cir. 2002) (finding insufficient evidence when the defendant “targeted [the victim] as part of a personal vendetta,” and noting a contrary ruling would mean §1951(a) reached “the extortion or assault of anyone who worked in any capacity at any company that participates in interstate commerce . . . blurring the boundaries between state and federal jurisdiction”); *United States v. Wang*, 222 F.3d 234, 240 (6th Cir. 2000) (robbery

of \$4,200 from victim's interstate restaurant business was insufficient); *United States v. Collins*, 40 F.3d 95, 98-101 (5th Cir. 1994) (theft of cash, jewelry, and car was insufficient).

Finally, the Ninth Circuit panel's extension of §1951(a) liability to virtually any extortion or robbery is the kind of expansion of federal criminal jurisdiction that this Court has cautioned against in recent opinions. For example, in *Loughrin v. United States*, 134 S. Ct. 2384 (2014), the Court recognized that the federal bank fraud statute should not be construed so that any fraud where payment is made by check constitutes a federal offense. In that case, the Court noted that "even the Government [has] expressed some mild discomfort with 'federalizing frauds that are only tangentially related to the banking system.'" *Id.* at 2392-93. Similarly, in *Bond v. United States*, 134 S. Ct. 2077, 2088 (2014), the Court emphasized that federal statutes should not be interpreted so as to "dramatically intrude upon traditional state criminal jurisdiction"

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Todd W. Burns

Date: December 18, 2017

TODD W. BURNS
Burns & Cohan, Attorneys at Law
1350 Columbia Street, Suite 600
San Diego, California 92101
Telephone: (619) 236-0244
Attorneys for Petitioner