No. 23-6753

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL AVENATTI, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the honest-services fraud statute, 18 U.S.C. 1346, is void for vagueness.

2. Whether petitioner's threat in this case -- that he would expose confidential information provided by petitioner's client unless a company paid petitioner at least $15 million -- constituted attempted extortion under the Hobbs Act, 18 U.S.C. 1951, and a threat to injure the property or reputation of another under 18 U.S.C. 875(d).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

United States v. Avenatti, No. 19-CR-373 (Feb. 18, 2022)

United States Court of Appeals (2d Cir.):

United States v. Avenatti, No. 21-1778 (Aug. 30, 2023)

United States v. Avenatti, No. 22-351 (Aug. 30, 2023)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-79a) is reported at 81 F.4th 171. The opinion and order of the district court denying petitioner's motion to dismiss the charge of honest-services wire fraud, in violation of 18 U.S.C. 1343 and 1346 (Pet. App. 80a-99a), is reported at 432 F. Supp. 3d 354. The opinion and order of the district court denying petitioner's motion to dismiss the charges of transmitting extortionate communications in interstate commerce, in violation of 18 U.S.C. 875(d), and attempted Hobbs Act extortion, in violation of 18 U.S.C. 1951 (Pet. App. 100a-117a), is unreported but is available at 2020 WL 70951.

The opinion and order of the district court denying petitioner's post-trial motions for a judgment of acquittal and for a new trial (Pet. App. 118a-213a) is unreported but is available at 2021 WL 2809919. A subsequent opinion and order of the district court is available at 2022 WL 452385.

JURISDICTION

The judgment of the court of appeals was entered on August 30, 2023. A petition for rehearing was denied on November 13, 2023 (Pet. App. 214a). The petition for a writ of certiorari was filed on February 12, 2024 (Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of transmitting extortionate communications in interstate commerce, in violation of 18 U.S.C. 875(d); attempted Hobbs Act extortion, in violation of 18 U.S.C. 1951; and honest-services wire fraud, in violation of 18 U.S.C. 1343 and 1346. Pet. App. 2a. The district court sentenced petitioner to 30 months of imprisonment, to be followed by three years of supervised release. Id. at 18a-19a. The court of appeals affirmed. Id. at 1a-79a.

1. Petitioner was a California-licensed attorney who, in March 2019, faced outstanding judgments of $11 million and whose law firm had been evicted from its office for non-payment of rent. Pet. App. 6a. That month, petitioner agreed to represent youth

sports coach Gary Franklin. Id. at 4a-5a. Franklin's youth basketball organization had received annual sponsorship funds from Nike for approximately ten years, but the relationship had soured after two Nike employees allegedly directed Franklin to make hidden payments to youth athletes and bullied him into stepping down from his coaching role. Id. at 4a. Nike ceased sponsoring Franklin's organization altogether in 2018. Ibid.

At a meeting with petitioner on March 5, 2019, Franklin and an associate provided documents -- which Franklin considered to be confidential -- that supported Franklin's claims regarding improper payments to players. Pet. App. 5a-6a. They also explained to petitioner what Franklin was seeking: "(1) to reestablish a sponsorship relationship with Nike, (2) to resume coaching his former team, (3) to have [the two Nike employees] fired, (4) to receive whistleblower protection, and (5) to be paid some sort of compensation by Nike." Id. at 6a. Franklin did not express any desire for public disclosure or an internal investigation into Nike, and never gave petitioner permission to publicize the documents that Franklin had shared with him. Id. at 5a-6a.

Through attorney Mark Geragos (who knew Nike's general counsel), petitioner set up a meeting in New York on March 19, 2019, with Nike's chief litigation officer as well as the company's outside counsel. Pet. App. 5a n.4, 7a-8a. A week before the meeting, petitioner told Geragos that he intended to pressure Nike

to hire petitioner -- rather than its existing outside counsel -- "to run an investigation" within the company. Id. at 7a (citation omitted). Petitioner also contacted a New York Times reporter on March 16, and told Geragos that if the Nike meeting did not "work out," he planned to hold a press conference and arrange for a story about the improper payments to appear in that newspaper. Id. at 8a-9a (citation omitted). But when petitioner met with Franklin the day before the meeting with Nike, he said nothing about the possibility of public disclosure or about pressuring Nike to hire petitioner to conduct an internal investigation. See id. at 8a. Instead, he told Franklin that he expected to get Franklin $1 million in compensation and to get the targeted Nike employees fired. Ibid. Petitioner also said he would try to reestablish Nike's relationship with Franklin's organization and get Franklin his coaching job back, though he thought the latter unlikely. Ibid.

At the March 19 meeting, petitioner told Nike representatives that he represented Franklin, who had information about Nike paying amateur players corroborated by documents implicating two Nike employees. Pet. App. 9a. Petitioner "stated that 'Nike was going to do two things': (1) 'pay a civil settlement to his client' for 'breach of contract, tort, or other claims'; and (2) hire [petitioner] and Geragos 'to conduct an internal investigation into corruption in basketball.'" Ibid. (citation omitted). Petitioner demanded that, if Nike used other attorneys to conduct

its internal investigation, it would have to then pay him and Geragos twice the amount it paid those attorneys. Id. at 9a-10a. Petitioner did not mention the possibility of Nike firing the two employees who had been involved in the allegedly improper payments, nor did he ask for Nike to renew its sponsorship of Franklin's organization. Id. at 10a. Instead, petitioner affirmatively volunteered that Franklin "would never be able to work with Nike again." Ibid. (citation omitted).

Petitioner told Nike's representatives that, if his demands were not promptly met, he would "blow the lid on this scandal" by holding a press conference the next day and leaking the story to the New York Times. Pet. App. 10a (citation omitted). Petitioner predicted that disclosure "would take billions of dollars off the company's market cap." Ibid. (citation omitted). After the meeting, the Nike representatives contacted federal prosecutors and agreed to allow the Federal Bureau of Investigation (FBI) to record all of their subsequent conversations with petitioner or Geragos. Id. at 11a.

On March 20, 2019, petitioner and Geragos had a follow-up call with Nike's outside counsel. Pet. App. 11a-12a. During the call, petitioner reiterated his demand that Nike pay Franklin $1.5 million and that petitioner and Geragos "be hired to handle the internal investigation." Id. at 12a (citation omitted). Petitioner explained that he would need to be paid more than just a "few million dollars" for the investigation because otherwise,

"it's worth more in exposure to me to just blow the lid on this thing." Ibid. (citation omitted). He described a payment between $10 million and $20 million as within a "degree of reasonableness." Id. at 13a (citation omitted).

On March 21, 2019, petitioner and Geragos again met with Nike attorneys. Pet. App. 13a. Petitioner first presented what he called "the easiest part," a draft settlement agreement under which Nike would pay Franklin $1.5 million. Ibid. (citation omitted). Then petitioner proposed a separate "confidential retainer agreement" under which Nike would pay him and Geragos a $12 million retainer at signing, to be "deemed earned when paid," which could be capped at $25 million and would require a minimum total payment of $15 million. Id. at 13a-14a (citation omitted). When Nike's outside counsel noted the large size of the demand, petitioner asserted that it was not "a lot of money in the grand scheme things," given what he described as his ability to "take 5, 6 billion dollars in market cap off of" Nike. Id. at 14a (citations omitted).

Nike's counsel told petitioner that the settlement demand for Franklin would not "be the stumbling block here," but asked if there was any "way to avoid your press conference without hiring you and [Geragos] to do an internal investigation." Pet. App. 15a (citation omitted; brackets in original). Petitioner said, "I'm not gonna answer that question." Ibid. (citation omitted). And petitioner rejected the idea of Nike increasing its settlement

amount with Franklin in order to avoid hiring petitioner and Geragos: "I don't think it makes any sense for Nike to be paying, um, an exorbitant sum of money to Mr. Franklin, in light of his role in this." Ibid. (citation omitted). Petitioner subsequently indicated that Nike could be "done" if it entered a single confidential settlement agreement of $22.5 million to be paid to "an account designated by Franklin's counsel." Id. at 15a-16a (citations omitted).

On March 25, 2019, after Franklin called petitioner to say that FBI agents had come to his house, petitioner placed several calls to the New York Times and tweeted an announcement of a March 26 press conference "to disclose a major high school/college basketball scandal perpetrated by @Nike that we have uncovered." Pet. App. 17a (citation omitted). His tweet said that "[t]his criminal conduct reaches the highest levels of Nike and involves some of the biggest names in college basketball." Pet. App. 17a (citation omitted). Franklin was "[v]ery, very upset" by the tweet because he "[n]ever wanted to go public" and intended for the information he had shared with petitioner to "remain confidential." Id. at 18a (citation omitted; first set of brackets in original).

2. A federal grand jury in the Southern District of New York indicted petitioner for transmitting extortionate communications in interstate commerce, in violation of 18 U.S.C. 875(d) (Count 1); attempted Hobbs Act extortion, in violation of

18 U.S.C. 1951 (Count 2); and honest-services wire fraud, in violation of 18 U.S.C. 1343 and 1346 (Count 3). Pet. App. 80a.

Before trial, petitioner moved to dismiss all three counts against him. See Pet. App. 80a, 100a-101a. As to Counts 1 and 2, petitioner contended that (1) the indictment failed to allege "wrongful" conduct and (2) the extortion statutes were vague as applied. Id. at 100a. As to Count 3, petitioner argued that (1) the indictment did not allege a bribe or kickback, as required to constitute honest-services fraud under Skilling v. United States, 561 U.S. 358 (2010); (2) the indictment failed to allege a violation of a "legally cognizable duty"; and (3) the honest-services statute was vague as applied to him. Pet. App. 80a-81a.

The district court denied the motions to dismiss. Pet. App. 80a-99a; id. at 100a-117a. The court found that the extortion counts (Counts 1 and 2) adequately alleged wrongfulness because they alleged that petitioner "used threats of economic and reputational harm to demand millions of dollars from Nike, for himself, to which he had no plausible claim of right." Id. at 115a. The court found that Count 3 adequately alleged "honest services wire fraud premised on a scheme to solicit a bribe." Id. at 92a. And it found that Count 3 also adequately alleged a violation of "the legally cognizable duties a lawyer owes to his client" because it alleged that petitioner violated his duty to his client by using "confidential information provided by his client to solicit side-payments from Nike for himself." Id. at

97a. Finally, the court found that petitioner's vagueness challenges were premature before trial. Id. at 98a-99a, 116a.

A jury found petitioner guilty on all three counts, and the district court denied petitioner's motions for judgment of acquittal and for a new trial. Pet. App. 118a-231a. The court found the evidence sufficient to show wrongfulness and intent to defraud, id. at 148a-154a, and explained that the statutes of conviction were not vague as applied to petitioner, id. at 154a-163a. Specifically, the court observed that the honest-services fraud statute provided adequate notice that petitioner's proposed "quid pro quo arrangement [with] Nike without his client's knowledge or authorization" would "expose him to criminal liability." Id. at 163a.

The district court sentenced petitioner to 30 months of imprisonment, to be followed by three years of supervised release. Pet. App. 18a-19a.

3. The court of appeals affirmed. Pet. App. 1a-79a.

The court of appeals agreed with the district court that the evidence was sufficient to convict petitioner on all three counts. Pet. App. 20a-52a. On the extortion-related counts, the court of appeals found the evidence sufficient to prove "wrongfulness" because petitioner had no claim of right to the money that he demanded for himself, as distinct from the smaller amount that he demanded for his client, Franklin. See id. at 26a-36a. The court rejected petitioner's arguments that his demand bore a sufficient

nexus to Franklin's claims or to a claim to attorney's fees, observing that the jury could find that petitioner's demand -- even if it resulted in a single $22.5 million settlement -- would not serve Franklin's interests and was not intended to do so, and that, in any event, petitioner never intended to pursue a bona fide internal investigation of Nike. See id. at 36a-41a. And on the honest-services fraud count, the court found the evidence sufficient to show both the quid pro quo of bribery and petitioner's fraudulent intent. See id. at 43a-52a.

ARGUMENT

Petitioner contends (Pet. 17-30) that the honest-services fraud statute, 18 U.S.C. 1346, is void for vagueness and that an attorney's "litigation conduct" cannot give rise to extortion liability under either the Hobbs Act, 18 U.S.C. 1951, or 18 U.S.C. 875(d). Review of those questions is unwarranted because they were not pressed or passed on below. In any event, petitioner's contentions lack merit, and do not implicate any conflict in the circuits. The petition for a writ of certiorari should accordingly be denied.

1. Further review is not warranted on petitioner's claim that the honest-services fraud statute, 18 U.S.C. 1346, is unconstitutionally vague.

a. As an initial matter, the Court should not consider petitioner's vagueness challenge because he did not raise it in the court of appeals, which accordingly did not address it.

Although petitioner raised an as-applied vagueness challenge to Section 1346 in the district court, he did not renew that claim on appeal. See Pet. C.A. Br. 4-5, 28-73. To the extent that petitioner suggests otherwise, he simply points to his assertion -- as part of his sufficiency claim -- that "[c]onstruing §§ 1343 and 1346 to criminalize [petitioner's] conduct just because he sought (and failed to disclose that he was seeking) personal benefit would raise vagueness concerns." Pet. 12 (quoting Pet. C.A. Br. 46). But that single sentence, referencing the principle of constitutional avoidance, fell well short of actually raising a standalone vagueness challenge in the court of appeals. See United States v. Botti, 711 F.3d 299, 313 (2d Cir. 2013) ("It is a settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.") (quotation omitted). And the words "vague" or "vagueness" do not even appear in petitioner's reply brief.[1]

[1] Nearly four months after the court of appeals heard oral argument, petitioner filed a Rule 28(j) letter in which he asserted that this Court's decisions in Percoco v. United States, 598 U.S. 319 (2023), and Ciminelli v. United States, 598 U.S. 306 (2023), "support [his] argument that his honest-services fraud conviction violates the Fifth Amendment's prohibition on vague criminal laws." C.A. Doc. 109, at 1 (May 16, 2023) (citing Pet. C.A. Br. 46). But as explained above, petitioner's briefing did not actually assert such an argument; the court of appeals properly understood petitioner to be making only a statutory-construction argument, Pet. App. 43a n.27; and on that understanding, the court of appeals correctly determined that Percoco and Ciminelli "do not pertain to [petitioner's] challenges," ibid.

Given that petitioner failed to preserve the argument that "§ 1346 [is] void for vagueness" that he now seeks to assert in this Court, Pet. i, the court of appeals naturally never addressed it. See Pet. App. 1a-79a. Consistent with this Court's "traditional rule," the Court should thus decline to grant a writ of certiorari to address a question that was "'not pressed or passed upon below.'" United States v. Williams, 504 U.S. 36, 41 (1992) (citation omitted).

b. Petitioner's claim is meritless in any event. The "void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Kolender v. Lawson, 461 U.S. 352, 357 (1983). The "touchstone" of the analysis is "whether the statute, either standing alone or as construed, made it reasonably clear at the relevant time that the defendant's conduct was criminal." United States v. Lanier, 520 U.S. 259, 267 (1997). This Court's decision in Skilling v. United States, 561 U.S. 358 (2010), forecloses petitioner's argument that Section 1346 is unconstitutional under that standard.

In Skilling, the Court held that "[Section] 1346 presents no vagueness problem" when construed to apply only to "fraudulent schemes to deprive another of honest services through bribes or kickbacks supplied by a third party." 561 U.S. at 404; see id. at 399-413. The Court explained that such schemes reflect the "solid

core" of the honest-services doctrine: "offenders who, in violation of a fiduciary duty, participated in bribery or kickback schemes." Id. at 407. And Congress codified those "core * * * applications" when it enacted Section 1346. Id. at 408.

Skilling explained that Section 1346's "prohibition on fraudulently depriving another of one's honest services by accepting bribes or kickbacks" does not implicate either of the concerns animating the void-for-vagueness doctrine. 561 U.S. at 412. First, the honest-services statute as construed in Skilling provides "fair notice" of its proscriptions because "it has always been 'as plain as a pikestaff that' bribes and kickbacks constitute honest-services fraud" and "the statute's mens rea requirement further blunts any notice concern." Ibid. (citation omitted). Second, the Court found "no significant risk" that "arbitrary and discriminatory prosecutions" will result, because Section 1346's "prohibition on bribes and kickbacks draws content not only from [historical honest-services prosecutions], but also from federal statutes proscribing -- and defining -- similar crimes." Ibid. "A criminal defendant who participated in a bribery or kickback scheme, in short, cannot tenably complain about prosecution under § 1346 on vagueness grounds." Id. at 413.

In light of Skilling, petitioner cannot show that the honest-services fraud statute is unconstitutionally vague as applied to his conduct. The jury was properly instructed, in accordance with Skilling, that the government had to prove a scheme to defraud

Franklin of petitioner's "honest services through bribery, that is, quid pro quo payments." See C.A. App. 681. And the court of appeals determined that the evidence "satisfied the quid pro quo requirement for bribery." Pet. App. 50a.

Petitioner incorrectly suggests (Pet. 21-23) that his case raises unique vagueness concerns because he was "a private individual with no relationship to government"; because he did not cause his client "any pecuniary harm"; and because the jury was allowed to consider his fiduciary duty to Franklin under "California Rules of Professional Conduct" that he asserts are themselves "vague." Each of those contentions lack merit.

First, Skilling clarified that Section 1346 applies "to state and local corruption and to private-sector fraud." Skilling, 561 U.S. at 413 n.45 (emphasis added); see id. at 407 n.41 (listing as examples of covered fiduciary relationships not only "public official-public" relationships but also "employee-employer" and "union official-union members"). Second, Skilling explained that honest-services fraud can occur when "the betrayed party suffer[s] no deprivation of money or property." Id. at 400.[2] Third, any alleged vagueness in the California Rules of Professional Conduct would not render Section 1346 vague. Petitioner was not convicted

[2] Although petitioner cites pre-Skilling cases holding that "private-sector honest services fraud required proof of tangible economic harm to the victim," Pet. 22, he fails to cite any such cases post-Skilling. See United States v. Nayak, 769 F.3d 978, 979-982 (7th Cir. 2014) (explaining why such a requirement would be inconsistent with Skilling).

for violating those rules; instead, those rules were used to establish the fiduciary duty to his client that petitioner violated when he proposed to sacrifice his client's interests in return for millions of dollars for himself.[3] See C.A. App. 680-681 (jury instructions).

Petitioner asserts (Pet. 23-24) that the court of appeals adopted an "unreasonable reading of the record -- one that not even the government urged" -- in holding that the jury could have inferred that "[p]etitioner was soliciting a bribe." But as the court of appeals observed -- and as the government pointed out below -- the record showed that petitioner had indicated both "implicit[ly]" and "explicit[ly]" that "in return for Nike agreeing to [petitioner's] own payment demand, [petitioner would] use his influence with the unwitting Franklin to have him accept $1.5 million in settlement of his claims" notwithstanding petitioner's failure to secure (or even pursue) the other objectives Franklin hoped to achieve, such as the re-establishment of Franklin's relationship with Nike. Pet. App. 46a-47a; see, e.g., Gov't C.A. Br. 34-35 ("The Government argued to the jury that [petitioner] sought a quid pro quo payment by telling Nike's attorneys that he would cause Franklin's claims to be settled only

[3] Furthermore, contrary to petitioner's suggestion, Pet. 22-23, California's Rules of Professional Conduct are not merely "legal ethics rules" that lack the force of law. See Cal. Bus. & Prof. Code § 6077 (West 2019) (making the rules of professional conduct "binding upon all licensees of the State Bar" and authorizing discipline for any willful breach).

if Nike paid [petitioner]. This bribery scheme is precisely what the evidence demonstrated, as [the district court] concluded.") (citation omitted). In any event, the lower courts' fact-specific determination that the evidence was sufficient to show quid pro quo bribery does not warrant this Court's review. See Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."); United States v. Johnston, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts.").

2. Petitioner's contention (Pet. 25-29) that "litigation conduct" can never give rise to liability under the Hobbs Act or Section 875(d) likewise does not warrant further review.

As a threshold matter, like petitioner's vagueness claim, that issue was not pressed or passed on below. Although petitioner argued that the evidence was insufficient to show the "wrongfulness" required for extortion, see Pet. C.A. Br. 34-45, he never argued, as he does now, that "litigation conduct cannot give rise to federal criminal extortion liability." Pet. 25 (capitalization and emphasis omitted). The court of appeals thus had no reason to address that question, and petitioner identifies no persuasive reason for this Court to review it in the first instance. See pp. 10-12, supra.

In any event, petitioner fails to demonstrate any error in the decision below. As relevant here, the Hobbs Act makes it a

criminal offense to commit "extortion" affecting commerce, or to "attempt[] or conspire[] so to do." 18 U.S.C. 1951(a). The Act defines "'extortion'" to mean "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. 1951(b)(2). In United States v. Enmons, 410 U.S. 396 (1973), this Court made clear that where "the alleged extortionist has no lawful claim to th[e] property," his "obtaining of the property would itself be 'wrongful.'" Id. at 400. And here, the court of appeals correctly recognized that petitioner's threats were wrongful under the Hobbs Act and Section 875(d) because "neither [his] $15-25 million retainer demand nor his $22.5 million alternative bore the requisite nexus" either to "any claim of right that Franklin may have had" that petitioner might assert as Franklin's lawyer, or to any claim that petitioner could have legitimately asserted with respect to attorney's fees. Pet. App. 41a.

Petitioner errs in asserting that the court of appeals' decision would "subject almost any unsuccessful lawsuit to a colorable extortion (and often a RICO) claim" because the other party "could contend that the plaintiff engaged in extortionate litigation," Pet. 28 (citation omitted). In affirming petitioner's Hobbs Act and Section 875(d) convictions, the court did not rely on a bad-faith threat to sue or "sizable, perhaps unreasonable, settlement demands." Id. at 29. To the contrary,

the court assumed that petitioner's demand for "a $1.5 million payment to his client Franklin" was reasonable. Pet. App. 26a; see id. at 29a. It was petitioner's separate "$15-25 million demand" for Nike to hire him to conduct an internal investigation that the court determined was unsupported by "any plausible claim of right" and therefore extortionate. Id. at 26a.

A similar misapprehension undermines petitioner's contention (Pet. 26) that this case implicates circuit disagreement about whether "litigation conduct can give rise to federal criminal extortion liability under the Hobbs Act." See Pet. 26-28. Contrary to that contention, this case does not implicate any clear circuit conflict that would warrant further review. Indeed, petitioner identifies only one decision, United States v. Pendergraft, 297 F.3d 1198, 1200-1202 (11th Cir. 2002), in which a court of appeals considered, in the context of a criminal prosecution, whether a defendant's threats to file a lawsuit violated the Hobbs Act. And the facts of that case are not analogous to the facts here, making it far from clear that the Eleventh Circuit would have set aside petitioner's conviction.

In Pendergraft, the Eleventh Circuit reversed the defendant's convictions for attempted Hobbs Act extortion where the defendant's attorney threatened to file an amended civil complaint based on false allegations that a county official had threatened violence at the defendant's abortion clinic. The court reasoned in part that the case involved an "[a]typical threat to litigate"

because the relevant "threat [was] to litigate against a county government," which the court viewed as more acutely implicating the First Amendment "right of citizens to petition their government for the redress of grievances." Pendergraft, 297 F.3d at 1207. The court indicated that it was "troubled" by the prospect of Hobbs Act "prosecution[s]" or "civil RICO" claims resulting from other types of threatened litigation. Ibid. But the court ultimately emphasized that its "holding [wa]s a narrow one," namely, that the defendants' "threat to file litigation against [the] County, even if made in bad faith and supported by false affidavits, was not 'wrongful' within the meaning of the Hobbs Act." Id. at 1208; see id. at 1207 ("[T]he case before us involves a threat to sue a government.").

In United States v. Koziol, 993 F.3d 1160 (2021), cert denied, 142 S. Ct. 1372 (2022), the Ninth Circuit distinguished Pendergraft's "narrow holding" and upheld a Hobbs Act extortion conviction that was "not based on litigation tactics or activities in prior or continuing civil litigation" but was instead "based on a threat of sham litigation to obtain property to which the defendant kn[ew] he ha[d] no lawful claim," id. at 1175. The decision in Koziol does not directly conflict with Pendergraft, and it is not clear that the Eleventh Circuit would reach different results on the same facts. Indeed, in an unpublished decision, the Eleventh Circuit upheld a Hobbs Act conviction based on "threats of bogus lawsuits, detentions, and seizures of property"

with nongovernmental victims, observing that "Pendergraft grants no immunity to those who make threats of these kinds 'clothed in legalese.'" United States v. Cuya, 724 Fed. Appx. 720, 724 (per curiam) (citation omitted), cert. denied, 584 U.S. 1008 (2018).

Petitioner also cites decisions from the Fifth, Sixth, Eighth, and Tenth Circuits involving civil RICO claims that considered whether threats of litigation or obstructive litigation conduct qualify as predicate extortion offenses. Pet. 26-28 (citing Snow Ingredients, Inc. v. SnoWizard, Inc., 833 F.3d 512, 525 (5th Cir. 2016); Deck v. Engineered Laminates, 349 F.3d 1253, 1258 (10th Cir. 2003); Vemco, Inc. v. Camardella, 23 F.3d 129, 134 (6th Cir.), cert. denied, 513 U.S. 1017 (1994); I.S. Joseph Co. v. J. Lauritzen A/S, 751 F.2d 265, 267 (8th Cir. 1984)). But as the Ninth Circuit observed in Koziol, those decisions all addressed pre-existing litigation involving business disputes, and the "policy concerns asserted in th[o]se cases are not implicated" in cases in which the defendant "ha[d] no relationship with his alleged extortion victim, including any prior or pending litigation." 993 F.3d at 1174.

Even if a circuit conflict existed, this case would not implicate it. Petitioner did not threaten to sue a public official based on false affidavits, nor did he face a civil RICO suit for litigation conduct in a business dispute. Indeed, the extortion charges in this case were not premised on petitioner's "litigation conduct" at all. Pet. 26. Instead, those charges were based on

petitioner's demand -- completely separate from his reasonable request for compensation for his client -- that Nike hire him to conduct an internal investigation. Petitioner fails to identify any court of appeals decision holding that such conduct is categorically immune from liability under the Hobbs Act or Section 875(d).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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