No. 24-1196

IN THE

Supreme Court of the United States

DWAINE COLLYMORE,

Petitioner,

v.

UNITED STATES,

Respondent.

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

REPLY BRIEF

DAVID C. ESSEKS
Counsel of Record
ELIZABETH M. SULLIVAN
ALEXANDRA B. HARRINGTON
ESSEKS INGOGLIA
350 Fifth Avenue
Suite 5200
New York, NY 10118
(212) 358-4343
david.esseks@esseksingoglia.com

Attorneys for Petitioner Dwaine Collymore

386173

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Cited Authorities

Page

Statutes

REPLY BRIEF FOR THE PETITIONER

The government attempts to limit *Prince v. United States*, 352 U.S. 322 (1957), to its particular facts and particular statute, but while this Court's decision in *Prince* was avowedly narrow in scope, it established a test for determining congressional intent regarding multiple punishments for that narrow range of offenses articulated within a single statutory provision. That is the situation presented by this case, and the government's attempts to distinguish *Prince* are unavailing.

The government attempts to relegate Petitioner's situation to a "decades-old lopsided conflict." Br. in Opp. 11. Yet the Court's decision in *United States v. Taylor*, 596 U.S. 845 (2022), *see* Pet. 6, has led to disparities in the application of sentencing principles under the Hobbs Act, *see id.* at 7, and history shows that courts across circuits have been inconsistent in their application of *Prince* to a wide range of multi-offense criminal statutes, from robbery to possession of narcotics to harboring of illegal aliens, *see id.* 21–23 (citing *United States v. Gore*, 154 F.3d 34, 47 (2d Cir. 1998); *United States v. Mendoza*, 902 F.2d 693, 696–97 (8th Cir. 1990); *United States v. Sanchez-Vargas*, 878 F.2d 1163, 1170–71 (9th Cir. 1989); *United States v. Palafox*, 764 F.2d 558, 561–62 (9th Cir. 1985); *United States v. Touw*, 769 F.2d 571, 574 (9th Cir. 1985) as applying *Prince*'s teachings, *but see United States v. Crowder*, 588 F.3d 929, 939–40 (7th Cir. 2009); *United States v. Boykins*, 966 F.2d 1240, 1245 (8th Cir. 1992); *United States v. Barrett*, 933 F.2d 355, 360–61 (6th Cir. 1991); *United States v. Savaiano*, 843 F.2d 1280, 1292–93 (10th Cir. 1988)). Courts across the country, when faced with a scenario like Petitioner's, are applying

different tests to the question of cumulative punishment permissibility.

The Court should grant certiorari.

A. The Question Is One of Congressional Intent

The question presented is whether cumulative punishments are allowed for multiple convictions in the particular circumstances of this case. That question is one of congressional intent. The test in *United States v. Blockburger*, 284 U.S. 299 (1932), answers the question in most cases: Where Congress enacted separate statutory provisions that criminalize offenses that each require proof of an element that the other does not, then the Court may confidently infer Congress's intent to authorize multiple punishments for those multiple convictions. *See also Iannelli v. United States*, 420 U.S. 770, 785 n.17 (1975) ("The test articulated in *Blockburger* . . . serves a . . . function of identifying congressional intent to impose separate sanctions for multiple offenses arising in the course of a single act or transaction."). As the government recognizes, the *Blockburger* test is a "rule of statutory construction." Br. in Opp. 7 (citing *Albernaz v. United States*, 450 U.S. 333, 340 (1981)).

Blockburger relies on the statutory geography of separate sections and separate penalty provisions to discern Congress's intent to authorize multiple punishments. *Blockburger*, 284 U.S. at 304 ("[W]here the same act or transaction constitutes a violation of two *distinct statutory provisions*, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.") (emphasis added).

But where Congress has created multiple offenses in the same statutory section that share a penalty provision, the Court cannot look simply to the statutory geography to determine congressional intent. It must look to other evidence. That is the simple teaching of *Prince*. *See Prince*, 353 U.S. at 328–29; Pet. 9–11. The *Prince* Court emphasized that "[n]o separate penalty clause was added for the crime of unlawfully entering. It was simply incorporated into the robbery provision." *Prince*, 353 U.S. at 326–27. And it declined to infer an intent "to make drastic changes in authorized punishments" "by indirection." *Id.* at 328.

If the government had charged Petitioner with attempted extortion under 18 U.S.C. § 1951 and conspiracy to commit extortion under 18 U.S.C. § 371—distinct crimes in *separate* statutory provisions—then there could be no question that Congress intended to allow multiple punishments (although in that circumstance, the maximum sentence for the conspiracy offense would be five years rather than 20). *See, e.g.*, *Albernaz*, 450 U.S. at 339 (concluding that the application of *Blockburger* was controlling where the conspiracy offenses at issue arose under different statutes, 21 U.S.C. § 963 and 18 U.S.C. § 846). But the government charged Petitioner with attempt and conspiracy wholly within the same clause of § 1951(a), which contains a single penalty provision. And as such, the Court cannot discern Congress's intent from the text and structure of the statute. More is required, under *Prince*, before multiple punishments may be imposed.

The Court in *Callanan v. United States*, 364 U.S. 587 (1961), considered whether conspiracy to extort and extortion, both violations of the same section of the Hobbs

Act, could be cumulatively punished. The Court concluded that because the "distinctiveness between a substantive offense and a conspiracy is a postulate of our law," it would "attribute 'to Congress a tacit purpose—in the absence of any inconsistent expression—to maintain a long-established distinction between offenses essentially different; a distinction whose practical importance in the criminal law is not easily overestimated.'" *Callanan*, 364 U.S. at 593–94 (quoting *United States v. Rabinowich*, 238 U.S. 78, 88 (1915)). But the Court in *Callanan* explicitly noted that for other equations of offenses under § 1951, the question of congressional intent is not clear: "That some of the substantive sections may be repetitive as being variants in phrasing of the same delict, or that petitioner could not be cumulatively punished for both an attempt to extort and a completed extortion, has no relevance to the legal consequences of two incontestably distinctive offenses, conspiracy and the completed crime that is its object." *Id.* at 595–96.

Thus, this Court has explicitly left open the question presented here: Whether Congress intended that two violations of § 1951(a) of the Hobbs Act, one an attempt and one a conspiracy, arising from a single event on a single night, could be punished twice, or only once.

There is no evidence in the legislative history that Congress intended to authorize cumulative punishments for attempt and conspiracy offenses arising from the single section of the Hobbs Act at issue here. The government has not even attempted to meet that burden, in the District Court, the Court of Appeals, or in its opposition to this petition.

The government relies on a series of cases in arguing that *Prince* applies only narrowly. Br. in Opp. 9–10. But the cases it cites concern offenses appearing in *separate* statutory provisions, reflecting congressional intent to authorize multiple punishments. While those cases certainly refer to *Prince* as of narrow scope, that narrow scope did not apply as none of them involved the structural situation present in *Prince* and present here.

Gore v. United States, 357 U.S. 386 (1958), concerned multiple punishment for convictions across two different sections of the Internal Revenue Code and the Narcotic Drugs Import and Export Act. 357 U.S. at 387. *United States v. Weingarten*, 713 F.3d 704 (2d Cir. 2013), concerned multiple punishment for convictions, on the same facts, of transportation of a minor with intent to engage in criminal sexual activity, in violation of 18 U.S.C. § 2423(a), and travel with intent to engage in illicit sexual conduct, in violation of 18 U.S.C. § 2423(b). 713 F.3d at 707. In deciding *Weingarten*, the Second Circuit correctly observed that "*Prince*'s limited rule is inapplicable" to the two-statute situation before it, *see id.* at 710, but that hardly limits *Prince*'s applicability in Petitioner's case. And *Reynolds v. United States*, 288 F.2d 78 (5th Cir. 1961), concerned multiple convictions for "a wilful attempt 'to evade or defeat' the tax, and (2) a wilful failure to 'pay over' such tax," both offenses violating the same section of the Internal Revenue Code of 1939. 288 F.2d at 78. But in concluding that Congress intended to authorize multiple punishments, the Fifth Circuit reasoned as follows: "Bearing in mind the 'policy of not attributing to Congress, in the enactment of criminal statutes, an intention to punish more severely than the language of its laws clearly imports in the light of pertinent legislative

history,'" *id.* at 79–80 (quoting *Prince*, 352 U.S. at 329), "that Congress intended to enact separate offenses . . . is made clear not only by the language of the statute but also by the fact that these provisions were subsequently included in the Internal Revenue Code of 1954 *as separate sections*," *id.* (emphasis added). *Gore*, *Weingarten*, and *Reynolds* cannot narrow *Prince* because their facts do not fall within *Prince*'s realm.

Ignored by the government's opposition are the decisions from various courts of appeals applying *Prince*'s teachings to questions of cumulative punishment permissibility when the relevant offenses are located within the same statutory provision. *See* Pet. 21–22. In *Touw*, the Ninth Circuit concluded that cumulative punishments were improper for attempt and conspiracy to possess marijuana with intent to distribute under 18 U.S.C. § 846, relying on a distinction between "strong congressional intent to criminalize all aspects of drug trafficking" and "congressional intent to punish the defendant more than once for the same criminal undertaking." *Touw*, 769 F.2d at 574 (citing *Palafox*, 764 F.2d at 560). This distinction is what *Prince* preserves; determining whether Congress intended either to cast a wide net of prohibited conduct when it placed multiple offenses within a statutory provision or allow cumulative punishments cannot be decided on a *Blockburger* elemental analysis. This is a question that reverberates across circuits, not just in the Hobbs Act context. *See* Pet. 21–24.

B. The Second Circuit's Decision in *Rahman* Does Not Decide the Permissibility Question

United States v. Rahman, 189 F.3d 88 (2d Cir. 1999), concerned conspiracy and attempt convictions arising

from different statutes, and its holding that multiple punishments are permissible for attempt and conspiracy convictions on those statutes simply does not confront the question raised here. The offenses at issue in *Rahman* arise from separate statutory provisions based on a pattern of conduct, and the question of permissibility of consecutive sentences arose in the context of the defendants' argument that consecutive sentences for those offenses were impermissible pursuant to 18 U.S.C. § 3584(a). 189 F.3d at 103–104, 155.

* * * * *

For the foregoing reasons and those stated in the petition for writ of certiorari, the petition should be granted.

Dated: October 6, 2025

Respectfully submitted,

David C. Esseks
Counsel of Record
Elizabeth M. Sullivan
Alexandra B. Harrington
Esseks Ingoglia
350 Fifth Avenue
Suite 5200
New York, NY 10118
(212) 358-4343
david.esseks@esseksingoglia.com

Attorneys for Petitioner Dwaine Collymore