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2 this was an investigation into the Southwest Goonz,  
3 which was a gang that was engaged in particularly  
4 violent and dangerous robberies in Roanoke. The DEA  
5 tracked about 30 home invasions to this gang. There  
6 were other prosecutions. This particular defendant was  
7 a bit of a tagalong, and he was prosecuted. But the  
8 main participants in this endeavor, which -- you know,  
9 the DEA was contacted by local law enforcement which  
10 said this is becoming a serious problem in Roanoke, and  
11 DEA came in and busted this gang. This is just one  
12 particular defendant.

13 CHIEF JUSTICE ROBERTS: The tagalong, he got  
14 20 years.

15 MR. YANG: Well, and he was involved in some  
16 very serious crimes. Actually, I think 30 home  
17 invasions.

18 JUSTICE KENNEDY: Actually -- actually, I  
19 think got 21, my chambers was telling me. You might  
20 check that. Which is, to me, one -- one year too many,  
21 but whatever.

22 CHIEF JUSTICE ROBERTS: A year's a year.

23 JUSTICE KENNEDY: Going -- going back to  
24 this case, the example that you gave with reference to  
25 the maritime jurisdiction, what you tell the jury is,

1 ladies and gentlemen of the jury, if you find that the  
2 incidents that have been considered in this court  
3 occurred on the high seas, then the jurisdictional  
4 element is satisfied.

5 MR. YANG: Yes. And you'd probably have to  
6 define what the high seas were as well.

7 JUSTICE KENNEDY: Pardon me?

8 MR. YANG: You'd also have to define what  
9 the high seas were for the jury.

10 JUSTICE KENNEDY: Okay. Then in this case,  
11 it suffices, in your view, if you say if you find there  
12 was a robbery of a drug dealer, then the jurisdictional  
13 element is satisfied?

14 MR. YANG: We think it's a little easier  
15 than that in this case. If you find that there was a  
16 robbery targeting the inventory, the marijuana of a drug  
17 dealer engaged in the trade of that marijuana, then  
18 it's -- there's a very direct and I think undeniable  
19 effect on --

20 JUSTICE KENNEDY: And the only defense  
21 evidence that could be introduced in the case is that  
22 the -- that the drugs were not involved? The defense  
23 could show that drugs were not involved.

24 MR. YANG: They could, and that would target  
25 direct -- there were other --

1 JUSTICE KENNEDY: But that's about all they  
2 can do with reference to the jurisdictional element?

3 MR. YANG: I think that's right in this  
4 particular case because that's the only factual question  
5 that's really relevant.

6 JUSTICE KAGAN: Well, maybe the person  
7 wasn't a dealer.

8 MR. YANG: Yes, that's -- yes.

9 CHIEF JUSTICE ROBERTS: I'm sorry. Did you  
10 concede that earlier, that it's not covered by the Hobbs  
11 Act if the person's not a dealer?

12 MR. YANG: Well, I didn't concede it. What  
13 I said is you'd have to have a different theory.

14 JUSTICE KAGAN: You said it was a very  
15 different thing.

16 MR. YANG: It was a different thing. And it  
17 supports --

18 JUSTICE KAGAN: And it would be a much  
19 harder thing.

20 MR. YANG: It would be harder.

21 JUSTICE KAGAN: And it would be at least an  
22 awfully good argument by the defendant that if the  
23 person was not a dealer, it's not affecting commerce in  
24 the regular -- in the relevant way?

25 MR. YANG: That's correct.

1 CHIEF JUSTICE ROBERTS: Even though Congress  
2 can regulate that transaction?

3 MR. YANG: Well, there -- there would be a  
4 question. I think that there are arguments to be made  
5 that would go beyond the arguments that we're making  
6 here, and we're not pressing those today for various  
7 reasons. I think as the Court has recognized, this is  
8 an area of some difficulty at times. Lopez recognizes  
9 that commercial power is necessarily one of degree, and  
10 that the Court's decisions have not provided precise  
11 formulation in the nature of things it cannot.

12 And so what we're -- the Court -- I'm  
13 sorry -- but the Court's taken an incremental approach,  
14 and we're doing something similar here.

15 JUSTICE ALITO: I asked Mr. Jones whether  
16 the Hobbs Act exercises the full measure of Congress's  
17 Commerce Clause, an authority which I thought a number  
18 of cases have said. Do you agree with that?

19 MR. YANG: It does. It does. Not only  
20 that, but I think --

21 JUSTICE ALITO: Because then you do run into  
22 these limitation -- in the search for a limiting  
23 principle, which you seem to be addressing. So Congress  
24 could prohibit and has prohibited a person from  
25 possessing even a very small amount of marijuana, right,



1 a single cigarette, a single marijuana cigarette?

2 MR. YANG: That's correct.

3 JUSTICE ALITO: So if one person steals a  
4 marijuana cigarette from another person, robs that  
5 person of one marijuana cigarette, that's a violation of  
6 the Hobbs Act?

7 MR. YANG: Well, there's a different  
8 argument there, and let me tell you why. The pure  
9 possession -- and we're not talking about the actual  
10 trade in marijuana but just the personal possession,  
11 that raises different questions. That was addressed by  
12 Raich. Now, there is an argument that could be made  
13 that that would fall within the Hobbs Act. At the same  
14 time --

15 JUSTICE ALITO: It falls within the Commerce  
16 Clause, doesn't it?

17 MR. YANG: It falls -- certainly the  
18 possession is something that Congress can regulate as  
19 Raich teaches. Now, whether the robbery of one  
20 possessing, that's yet additional -- an additional link  
21 into the Commerce Clause inquiry. And what I can say is  
22 that the courts of appeals have recognized, as this  
23 Court has, the -- in a search for the outer limits of  
24 the Commerce Clause, the courts have pulled back and  
25 they've suggested that when you're robbing just a mere

1 individual who's not a business or engaged in a business  
2 in the -- in the context of the robbery, that raises  
3 different questions and it's much more difficult to  
4 establish necessary nexus.

5           We're -- we're not actually taking that on  
6 in this case because we don't think we have to. What we  
7 have in this case is robbery of the commodity,  
8 marijuana, from people engaged in its trade when we  
9 know -- we know that falls well within commerce over  
10 which the United States has jurisdiction.

11           JUSTICE ALITO: Suppose someone robbed the  
12 farmer in Wickard v. Filburn of the wheat that the  
13 farmer was growing for personal consumption. Would that  
14 be a violation of the Hobbs Act?

15           MR. YANG: Wickard is a little bit more  
16 complicated because it was personal consumption but in  
17 the context of a commercial enterprise, right? He was  
18 growing wheat for his animals and growing wheat -- he  
19 also grew wheat for sale. So -- but the wheat that  
20 we're talking about is the wheat that he was growing for  
21 his own use in his business. I think there would be a  
22 stronger argument there than what you'd have if you just  
23 happened to stumble upon someone, you rob them, and you  
24 picked up, you know, some wheat or a marijuana cigarette  
25 out of their house.

1           Again, we don't deny that there are, at the  
2 fringes, difficult questions that this Court may have to  
3 address at some point. But we're talking --

4           JUSTICE KENNEDY: What is your understanding  
5 of what the defendant wanted to -- the evidence the  
6 defendant wanted to introduce?

7           MR. YANG: I think the defendant wanted to  
8 introduce evidence that not all marijuana in Virginia is  
9 coming from out of State. And that's not legally  
10 relevant to our --

11          JUSTICE KENNEDY: Was there any challenge to  
12 the status of these victims as dealers?

13          MR. YANG: I think there might have been  
14 indirectly through cross-examination, but what we're  
15 talking about here is, remember, is an attempt. This is  
16 an -- the Hobbs Act --

17          JUSTICE KENNEDY: I understand that.

18          MR. YANG: -- not only -- not only covers --

19          JUSTICE KENNEDY: It was an attempt against  
20 persons who were in the drug trade?

21          MR. YANG: And at least at a minimum who the  
22 defendants believed were in the drug trade, and that's  
23 really what the relevant question is here. Because if,  
24 for instance, there's -- you know, two people make an  
25 elaborate plan to rob a bank and then they end up

1 showing up at a business that's not a bank, it's  
2 actually someone's house, they can be charged with  
3 either a conspiracy or an attempt charge based on the  
4 facts as they -- as they understood them.

5 And here, I don't think there's much of an  
6 argument that the evidence was sufficient to show that  
7 these individuals had the understanding that the two  
8 victims here were drug dealers that were engaging in  
9 marijuana --

10 JUSTICE SOTOMAYOR: Mr. Yang, I'd like to --  
11 for you to explain to me what the difference in charges  
12 are between this robbery and a regular robbery, let's  
13 say of a business. Because as you've noted, there are  
14 many circuits that say if you just rob a person  
15 individually, that's not a Hobbs Act robbery. But if  
16 you rob a business, it is. So how does a judge charge  
17 in a regular Hobbs Act case and this kind of case?

18 MR. YANG: Well, it will depend, I think, in  
19 part on the government's theory of the case. The  
20 government makes charging decisions and presents its  
21 theory, and the judge would have to charge with  
22 respect --

23 JUSTICE SOTOMAYOR: I understand the  
24 charges, counsel.

25 MR. YANG: So in the normal case, and this

1 is the -- this is kind of the -- the mind run of cases  
2 that all the courts of appeals have accepted are as kind  
3 of a depletion-of-assets theory case.

4 Now, in those types of cases when you're  
5 involving the robbery of a business, the government puts  
6 on evidence -- this could be any type of business pretty  
7 much -- that the business engages in some kind of  
8 interstate commerce. That's kind of showing something  
9 particularized, just like here you're showing it's the  
10 marijuana dealer.

11 JUSTICE SOTOMAYOR: Engages how, either by  
12 buying goods in commerce --

13 MR. YANG: Buying goods from out of State,  
14 selling to out-of-State customers, buying equipment from  
15 out of State, all types of things.

16 JUSTICE SOTOMAYOR: Let's assume that that's  
17 true.

18 MR. YANG: Uh-huh.

19 JUSTICE SOTOMAYOR: Is the jury charged that  
20 this particular robbery had to affect that?

21 MR. YANG: Yes, because what they end up --  
22 the theory, the depletion of assets theory, which again,  
23 this has been established in all the courts of appeals  
24 for quite some time, is that even if you're robbing  
25 not -- something that has not moved in commerce, say,

1 money --

2 JUSTICE SOTOMAYOR: Right.

3 MR. YANG: -- what you're doing is you're  
4 depleting the assets of an enterprise that is engaging  
5 in interstate commerce. And so by doing that, you're  
6 hindering its ability to engage in interstate commerce  
7 on a prospective basis.

8 JUSTICE SOTOMAYOR: So -- so the jury is  
9 charged to make that determination, that this act of  
10 robbing the money hindered the commerce in some way?

11 MR. YANG: Or has the potential to.

12 JUSTICE SOTOMAYOR: So how is that different  
13 than his argument, your adversary's argument that --

14 MR. YANG: Oh, I think that that is his  
15 argument. I think he accepts in his brief the depletion  
16 of assets theory and says that the government has to  
17 show that this marijuana moved in interstate commerce,  
18 or that the dealers sold to people out of State, which I  
19 will note parenthetically is a little difficult when  
20 we're talking about an attempt, and we're talking about  
21 people who trade in marijuana. They don't always -- are  
22 not always forthcoming in their admissions to law  
23 enforcement, but that's his theory.

24 Our position is that is not necessary  
25 because we know already -- although that's one means of

1 showing an effect on interstate commerce, there are  
2 other means. And the theory here is that the robbery  
3 affects commerce over which the United States has  
4 jurisdiction.

5 We know that commerce of the United States  
6 has jurisdiction includes the inter- or intrastate trade  
7 in marijuana, and that, therefore, in this theory --  
8 which is different, it's a different way of proving the  
9 same jurisdictional element -- that under our theory  
10 here, the evidence was sufficient because there was  
11 sufficient evidence to show that these -- the Southwest  
12 Goonz, including Petitioners, were targeting these two  
13 victims because they expected to gain marijuana from the  
14 individuals who they thought were drug dealers.

15 If the Court has no further questions, we'd  
16 ask that you affirm.

17 CHIEF JUSTICE ROBERTS: Thank you, counsel.

18 Mr. Jones, you have five minutes remaining.

19 REBUTTAL ARGUMENT OF DENNIS E. JONES

20 ON BEHALF OF THE PETITIONER

21 MR. JONES: Thank you, Your Honor.

22 The -- I'd like to digress to -- to the  
23 question about a single cigarette, if -- if that is  
24 stolen, would -- or subject of robbery, would -- would  
25 that affect the Hobbs Act.

1           Taking the extension that my friend is  
2 suggesting here, if we read the last phrase of the Hobbs  
3 Act, it says, "All other commerce over which the United  
4 States has jurisdiction."

5           The application of Raich to controlled  
6 substances, the Controlled Substance Act, if the -- if  
7 it has no limits on -- on this element of interstate  
8 commerce, then the answer to that is if a person comes  
9 up and -- and robs an individual of a single joint of  
10 marijuana, it could possibly trigger a Hobbs Act  
11 conviction because it's "all." It encompasses "all."

12           I don't think that under any interpretation  
13 of -- of the Hobbs Act has it -- has it been discussed  
14 that we're going to make robberies a -- a generalized  
15 Hobbs Act --

16           JUSTICE KENNEDY: That isn't this case.  
17 This case is a robbery of a drug dealer, correct?

18           MR. JONES: That's correct. And what we're  
19 saying, Your Honor, is that in -- in the robbery of a  
20 drug dealer, it still requires an independent finding  
21 about whether or not there was this effect on commerce.  
22 And that's what's lacking here. That's -- that's what's  
23 lacking in -- in this case, and that's what we're  
24 suggesting should take place.

25           The government should have to prove that



1 element so that the jury, in its deliberations, would  
2 make that independent finding on that element on the  
3 jurisdictional element.

4 Any questions?

5 With that, Your Honor, we would ask the  
6 Court to reverse.

7 CHIEF JUSTICE ROBERTS: Thank you, counsel.

8 Case is submitted.

9 (Whereupon, at 10:58 a.m., the case in the  
10 above-entitled matter was submitted.)

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<p style="text-align: center;"><b>A</b></p> <p><b>a.m</b> 1:13 3:2 49:9  <b>ability</b> 4:15 9:23              46:6  <b>Abingdon</b> 1:15  <b>able</b> 5:13,13 20:17              20:18  <b>above-entitled</b> 1:11              49:10  <b>absence</b> 20:16  <b>academic</b> 25:14  <b>accepted</b> 45:2  <b>accepts</b> 46:15  <b>accused</b> 3:12  <b>acknowledged</b> 20:1  <b>act</b> 3:11 5:16,18,22              5:25 6:15,16,20              7:14,16 11:2,5              13:6,10,17,24,25              14:2,7,16 15:4              16:1 17:12 33:2              35:22 39:11 40:16              41:6,13 42:14              43:16 44:15,17              46:9 47:25 48:3,6              48:10,13,15  <b>activities</b> 22:8  <b>activity</b> 18:11 33:6  <b>acts</b> 17:12  <b>actual</b> 29:13 30:3              41:9  <b>added</b> 21:3  <b>additional</b> 36:15              41:20,20  <b>address</b> 6:18 19:12              20:19 43:3  <b>addressed</b> 6:13,14              12:8 17:24 41:11  <b>addresses</b> 6:20  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