

# Supreme Court of the United States

OCTOBER TERM 1970

In the Matter of:

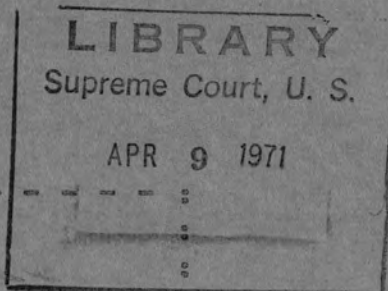
ALCIDES PEREZ.

Petitioner

vs.

THE UNITED STATES

Respondent



Docket No. 600

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Place Washington D. C.

Date March 22, 1971

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C O N T E N T S

ORAL ARGUMENT OF:

P A G E

Albert J. Krieger, Esq. on behalf of Petitioners

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Erwin N. Griswold, Solicitor General of the  
United States on behalf of Respondent

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Rebuttal by Albert Krieger

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

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ALCIDES PEREZ,	)	
	)	
Petitioner	)	
	)	
vs	)	No. 600
	)	
THE UNITED STATES,	)	
	)	
Respondent	)	
	)	

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The above-entitled matter came on for argument at  
10:05 o'clock a.m., on Monday, March 22, 1971.

BEFORE:

WARREN E. BURGER, Chief Justice  
HUGO L. BLACK, Associate Justice  
WILLIAM O. DOUGLAS, Associate Justice  
JOHN M. HARLAN, Associate Justice  
WILLIAM J. BRENNAN, JR., Associate Justice  
POTTER STEWART, Associate Justice  
BYRON R. WHITE, Associate Justice  
THURGOOD MARSHALL, Associate Justice  
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

ALBERT J. KRIEGER, ESQ.  
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New York, N. Y. 10013  
On behalf of Petitioner

ERWIN N. GRISWOLD, Solicitor General  
of the United States of America  
Department of Justice  
Washington, D. C.  
On behalf of Respondent

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1 term, the phrase: "Extension of credit," extension of credit  
2 as defined by the statute refers not merely to a debt but to a  
3 claim, be that claim valid or invalid, acknowledged or not,  
4 disputed or not, however arising, so long as the satisfaction  
5 of that claim is deferred.

6 The hearings before Congress certainly disclosed  
7 and it may well be assumed that organized crime is interstate  
8 in character and that organized crime may have, as one of  
9 their substantial sources of revenue, loan sharking; that is  
10 the lending of money at usurious rates of interest. But there  
11 is nothing within the proceedings had before Congress which  
12 would warrant the broad and sweeping finding that extortion  
13 per se, is a crime which belongs in the Federal lexicon.

14 The types of expression covered here may well  
15 include the incidental extortion to which a loan shark may  
16 resort in seeking collection of a debt -- of a lending. It  
17 may also include an irate wage-earner going to his employer  
18 and demanding wages. It may include an irate motorist after  
19 a collision, saying to another driver: You will pay me for  
20 this damage, one way or the other, and by the end of the week.  
21 These are all included within what we contend is any reason-  
22 able reading of the definition "extension of credit."

23 Certainly, and we concede there are times when  
24 extortionate means are employed by loan sharks. But what  
25 Congress has done here is because organized crime may be well

1 involved in loan sharking and loan sharking at some time may  
2 involve extortion, but all extortion, regardless of how it  
3 arises, becomes a Federal offense.

4 We respectfully submit that such a statute is a  
5 classic case of overkill. Certainly Congress may legislate  
6 against the crime of extortion; Congress has done so in 1951  
7 and 1952, the Travel Act. Congress may broaden what it in-  
8 cludes as a Federal offense in extortion so long as that ex-  
9 tortion may reasonably be connected with a Federal interest.  
10 The Federal interest, however, between extortion generally --  
11 extortion generally, appears to be lacking. The Federal  
12 connection to extortion generally appears to be lacking.

13 Certainly it did not appear within the hearings.  
14 The hearings were directed at a specific definable class of  
15 activity. Congress, in seeking to legislate against an  
16 organized crime activity, enacted this statute, and Congress  
17 stated that the purpose of this statute is to strike at the  
18 second-most lucrative source of revenue for organized crime:  
19 loan sharking. There is nothing within the proceedings before  
20 Congress which characterized extortion as a uniquely organized  
21 crime activity or that extortion, per se, is a lucrative  
22 source of funds for organized crime.

23 The Federal peg for the general extortion statute  
24 is lacking. There is no definable class of activity or acti-  
25 vities whose very nature might compel the finding of the

1 Federal interest a la the current gambling statute. Where  
2 Congress, instead of making all gambling illegal, said  
3 gambling of a certain type has characteristics which compel  
4 the finding of a Federal interest. Such as: it must involve  
5 the gambling activity; it must involve five or more people,  
6 dealing in amounts in excess of \$2,000 on a daily rate, an  
7 activity which is continued for 30 days or more. And that  
8 the gambling activity be the business of the individual.

9 Here, if I may say "occasional extortioner",  
10 finds himself fully within the purview of this statute even  
11 if his activity is totally unrelated to loan sharking, the  
12 vice which Congress was seeking to control.

13 It is our contention that the means that Congress  
14 has selected to control laon sharking, these means are far too  
15 broad, far too inclusive and exceed the authority of Congress,  
16 both under the Interstate Commerce Clause and under the  
17 Bankruptcy Clause.

18 We believe and we do not argue here that every  
19 specific criminal statute requires a recitation that there  
20 must be proved to a jury an interstate activity or that an  
21 interstate facility was used. We do believe, however, that in  
22 a criminal statute there must be a showing at the trial level  
23 if not of the interstate activity itself, or the use of the  
24 interstate facility, but such a state of facts as warrants  
25 the conclusion that the Federal interest is involved.

1 Q What are the underlying facts of this case?

2 A The underlying facts in this case, Mr.

3 Justice Harlan, are that in a local butcher store in Brooklyn  
4 Mr. Miranda was -- Mr. Miranda was the owner of a local  
5 butcher store in Brooklyn; that he needed some money and was  
6 not able to obtain money through the usual sources, and  
7 through a friend was introduced to the Petitioner. The  
8 Petitioner loaned him some money at a usurious rate of in-  
9 terest.

10 Eventually Mr. Miranda was unable to repay; a  
11 new loan was worked out; again at a usurious rate of interest.  
12 Mr. Miranda was again unable to pay and finally extortionist  
13 threats were made to Mr. Miranda as an attempt to effect re-  
14 payment.

15 There were no interstate facilities used. This  
16 all involved a transaction occurring in Brooklyn, New York,  
17 in the Williamsburg section.

18 Q But it is conceded that run-of-the-mill  
19 extortion was exercised? And threats were made. I take it  
20 from your statement just now this is conceded?

21 A Oh, yes, Your Honor; there was extortion  
22 under the proof in this case; there was.

23 But we feel that the fact of extortion in this  
24 case still does not make the extortion as committed by the  
25 defendant here a Federal offense. The only way this extortion



1 could become a Federal offense is if a general extortion  
2 statute were part of our Federal criminal code. And that is  
3 basically what the Consumer Credit Protection Act is.

4 If the intent of Congress were carried out --  
5 if the intent of Congress were carried out it is perhaps quite  
6 possible that Mr. Perez's activities would fall within a  
7 loan sharking definition that would be constitutionally accep-  
8 table, but we are dealing not with such a statute. I repeat:  
9 we're dealing with a general extortion statute, and regardless  
10 of the constant reference to this statute as a loan sharking  
11 statute, its basic nature was not changed.

12 The Congress, in the proposed new Federal  
13 Criminal Code, treated the loan sharking statute anew and here  
14 they face up to the problem, because there was a recognition  
15 in the commentary that such jurisdiction, referring to this  
16 plenary jurisdiction over extortionary activity may well be  
17 overbroad. And they recognized also, apparently, that this  
18 statute, the current statute was an extortion statute. And  
19 they rewrote --

20 Q What's the constitutional difference between  
21 a loan sharking statute, as you call it, which I take it you  
22 say would be all right, or might be all right under this  
23 statute?

24 A I would say that the constitutional dif-  
25 ference here is that this statute, just generally was an

1 enormous vacuum cleaner type effect, sweeps in every type of  
2 extortionist activity, be it intrastate, be it interstate,  
3 be it connected with a Federal interest, be it not connected  
4 with a Federal interest.

5 A loan sharking statute, such as the one that  
6 appears in Section 1771 of the proposed code, defines a class  
7 of activity, thereby limiting the scope of the statute. It  
8 legislates against loan sharking as a business; it implants  
9 definitions of the business, the character of the business and  
10 the nature of the business connects it with organized crime  
11 activity so that the casual lender, just as the casual gambler,  
12 is omitted from the impact of Federal jurisdiction.

13 I think that we are basically dealing, sir, with  
14 matters of definition: how far out may Congress reach in  
15 legislating against what might well be an interstate evil.  
16 This is basically, I submit, a matter of the scope. It is  
17 true that extortion within the loan shark gambling, may be  
18 reached, but may extortion unrelated to loan sharking activity  
19 be reached also.

20 Q Can you have loan sharking without extor-  
21 tion?

22 A The hearings before Congress so state.  
23 They say that the only time that extortion arises is when there  
24 is a failure to pay; that loan sharking --

25 Q You mean when there is a failure to pay an

1 extortionate rate of interest.

2 A A usurious rate of interest.

3 Q He can't collect it any other way; can he,  
4 other than extortion?

5 A He cannot rely, of course, upon the --

6 Q Well, my question: can he collect it any  
7 other way than by extortion? If the man says, "I just won't  
8 pay.

9 A If the man says, "I just won't pay," I  
10 would assume that the loan shark would then have to resort to  
11 an extortionist kind of conduct. I cannot conceive of any  
12 other way.

13 Q Well, then isn't extortion a peculiarly  
14 necessary part of loan sharking?

15 A No, sir; it would be a peculiar part of  
16 loan sharking in the respect of that part of loan sharking  
17 is based upon a failure to pay.

18 Now, we certainly are --

19 Q Isn't it true in New York that the person  
20 who got the loan could go to court and have it wiped out on  
21 the grounds it was usurious?

22 A That's a perfect defense to the loan. If  
23 the loan shark were to sue the usurious rate of interest would  
24 render, in the nature of a defense, the loan void and unen-  
25 forceable. Yes.

1 But we also have the situation where people who  
2 deal with loan sharks deal, to a great extent, in a matter of  
3 trust, the same as in the gambling business, where these sort  
4 of obligations apparently are honored. But it is not  
5 necessary to be an extortionist to be a loan shark. And I  
6 think that the hearing minutes bear that out.

7 Q Well, are you suggesting that the customers  
8 of this kind of an enterprise voluntarily pay a usurious rate  
9 of interest to which are added increasing amounts as time goes  
10 on?

11 A Such is the testimony, Mr. Chief Justice,  
12 that there are many, many --

13 Q In the Congressional hearings?

14 A In the Congressional hearings. That there  
15 are many, many people who are unable to resort to our normal  
16 avenues of commerce in order to obtain loans for financing.  
17 And a specific statement, as a matter of fact, Mr. Metzger,  
18 Assistant District Attorney throughout the session, of the  
19 District Attorney Hogan's office of New York County, was that  
20 most loan sharking transactions are amicable transactions, in  
21 their commencement and in their conclusions.

22 Q Does it not depend on the extent of the  
23 usury? When the interest begins to equal the principal doesn't  
24 it begin to get into a situation where they must use threats  
25 of violence to collect?



1 A No --

2 Q As this record shows.

3 A I think that it does occur, sir; it does  
4 occur, Mr. Chief Justice, but it isn't an inherent part of the  
5 deal. Most loan sharking transactions, according to what we  
6 find in the Congressional hearings, end amicably. There are  
7 those where there is a resort to extortion. We do not ques-  
8 tion that. But where is the resort to extortion a \_\_\_\_\_  
9 of loan sharking transactions, warrants the enactment of an  
10 extortion statute which reaches all and every type of extortion  
11 through which the human mind can pass in this country and make  
12 that a Federal crime.

13 That, I think, is the basic defect in this  
14 statute. Certainly if a certain type of extortional behavior  
15 could be reasonably defined as present in organized crime  
16 loan sharking, I think Congress could legislate against that.

17 Q May I ask you how much this loan was?

18 A Originally \$1,000. It went up to \$3,000 --

19 Q What was the interest rate to be paid?

20 A I would estimate it to be in excess of 35  
21 percent, which is mentioned in the statute.

22 Q Payable how often?

23 A Payable at usurious terms. I think the  
24 original loan was \$1,000 payable at the rate of \$100 and some-  
25 odd dollars -- \$105 a week for 14 weeks.

1 Q Now, what was the extortion used?

2 A Well, Mr. Miranda's business proved to be

3 unsuccessful and he was unable to meet the payments. The

4 Petitioner allegedly went to Mr. Miranda and told him that --

5 Q Is that in the evidence?

6 A Yes, sir. -- told him that somebody else

7 had borrowed from him and hadn't paid and had wound up in the

8 hospital. The extortionate character --

9 Q Was that the extent of the extortion

10 claims here?

11 A No one was hurt, if that is what Your Honor

12 is referring to?

13 Q I'm trying to find out how he extorted it.

14 A It wasn't successful. I think one payment

15 was made after the threat and the entire debt was never re-

16 paid. The defendant was arrested some months --

17 Q I gathered that, but what was the extor-

18 tion?

19 A The extortion was a threat of bodily injury

20 in the event of failure to pay what was due and owing.

21 Q How? Did he say how he would injure him?

22 A No. No; he had made reference to other

23 people, to another person who had gone to the hospital.

24 Q How many times did he threaten him?

25 A I think three times.

1 Q And each time it was the same kind of  
2 statement, that somebody else had been hurt?

3 A Basically; yes, sir. Basically yes, sir.

4 Q Was he indicted in the state court?

5 A No. There was no prosecution brought in the  
6 state court. Mr. Miranda first turned, as a matter of fact,  
7 to the city police and I am unaware as to what happened when  
8 he made a complaint to the city police, but he then complained  
9 to the FBI and -- about a month after he complained to the  
10 FBI the Petitioner was arrested.

11 Q Mr. Krieger you have repeated several  
12 times, as I understood you at least, that you think that  
13 Congress would have constitutional power to enact a criminal  
14 statute in this area and even to make the particular conduct  
15 involved in this case a Federal crime. Did I understand you  
16 correctly? But I notice you say that this statute is far too  
17 broad in scope.

18 A I think that I did say that, Mr. Justice  
19 Stewart.

20 Q And under what power of Congress -- under  
21 what provision of the constitution?

22 A Basically under the Interstate Commerce  
23 Clause. As far as the Bankruptcy Clause is concerned, I don't  
24 think that I could add anything to what Judge Hays said in the  
25 dissent in this case. I think that it is a very broad reach

1 and a large step from uniform laws on bankruptcy to a statute  
2 such as this dealing with extortion generally.

3 Q All right, but you think that under the  
4 Commerce Clause Congress would have the power to make this  
5 conduct a Federal criminal offense?

6 A Provided that the loan sharking -- the  
7 underlying loan sharking was connected in some manner with a  
8 Federal interest. That Federal interest may come about  
9 through the use of Federal facilities, interstate facilities  
10 or if the loan sharking activity was the type of business --  
11 proved to be the type of business whereby the loan sharking  
12 would be part of what we might call "The organized crime  
13 complex."

14 Q Now, proved what, in each individual  
15 criminal prosecution or proved in Congressional hearings?

16 A I think that it should be proved in the  
17 manner that was suggested to the proposed code where they say  
18 there should be proof that the man was engaged in the business  
19 of loan sharking.

20 Q And you think that if Congress enacted a  
21 statute saying that it's a criminal offense to be engaged in a  
22 business of loan sharking, that that would be a constitutional  
23 statute; do you?

24 A If he engages in the business of loan  
25 sharking with a few added -- a few added provisions in there,



1 as well.

2 Q In where? In the statute or in the proof  
3 in a particular criminal prosecution?

4 A In the statute itself, which, of course,  
5 would be part of the proof that would be required at the trial.

6 Q And what would this additional embroidery  
7 be?

8 A I think that the sense of the statute, the  
9 sense of the hearings is to attack organized crime there  
10 should be required that there is an organized criminal element  
11 in that loan sharking -- in the loan sharking transaction  
12 against which the prosecution is leveled. In the same manner  
13 as in a gambling statute they seek a criminal organization  
14 in order to bring that gambling within the Federal area.

15 If a man is individually in loan sharking then  
16 there is nothing within a Congressional hearing which would  
17 support the findings that he had an impact upon interstate  
18 commerce. If he is in the business of loan sharking and he  
19 utilizes other people then he may well be engaged in an or-  
20 ganized criminal activity --

21 Q Suppose it is, but it has no connection with  
22 interstate commerce?

23 A I think that if it is an organized criminal  
24 activity and Congress, through the hearings, has established  
25 organized criminal activity as affecting interstate commerce,

1 it may well be that under the Wickard against Filburn rule he  
2 may find himself brought in within the gambit --

3 Q But there you have something more than an  
4 organized crime; you have it making an impact of some kind on  
5 interstate commerce.

6 A Yes, sir --

7 Q Is that what you claim there must be in  
8 order for it to be a valid Federal statute?

9 A I do not contend that the impact on inter-  
10 state commerce has to be proved at the trial if the definition  
11 of the criminal activity includes within it, such provable  
12 facts -- such provable facts at a crime level as it was, of  
13 necessity linked to criminal activity to interstate commerce.

14 Q Well, I suppose you and I would agree that  
15 -- at least under existing constitutional law, that Congress  
16 couldn't make a local larceny of a Federal criminal offense.

17 But, as a juror would you concede that if a person were in the  
18 business of being -- of grand larceny, that Congress could do  
19 so? If he just scalped everybody and went to his job of  
20 stealing, that that would be a Federal offense just because he  
21 was in the business of it?

22 A No.

23 Q Then I don't understand your point at all,  
24 really.

25 A I am trying to equate the supposition that

1 Your Honor poses with the Federal gambling statute.

2 Q But that's not before us.

3 A No. But there are new certain standards in  
4 there which I think make that statute not necessarily  
5 constitutionally objectionable as opposed to this statute.

6 They say that a man can be in the business of  
7 gambling. In your instance the man would have to be in the  
8 business of larceny. That his activity, by definition, would  
9 be connected with organized criminal activity which has been  
10 established before Congress to be in the business of grand  
11 larceny, of the type and nature of which this man stands  
12 accused in a Federal court.

13 Q But it's not just that it's organized; it  
14 has to -- there has to have been a finding or evidence that  
15 it's a national or at least an interstate organization.

16 A Yes, sir.

17 Q Is that right?

18 A Yes, sir.

19 Q Or a national organization. It's got to be  
20 more than just organized; it has to be broader than merely  
21 statewide in scope.

22 A Well, if three people just go about their  
23 business of stealing I don't think it's a Federal offense, nor  
24 does that have an impact upon a Federal --

25 Q It has to get out of the confines of

1 Brooklyn at least.

2 A I believe so.

3 Q Well, that's what made me wonder why you  
4 conceded that this conduct of your client which you emphasized  
5 to us earlier, was all within the City of Brooklyn, New York.  
6 Why would, conceding as you tell me you did -- I didn't mis-  
7 understand you -- that it could have been made a Federal  
8 criminal offense by a properly drawn statute?

9 A I did not intend to so concede.

10 Q Well, you did it twice.

11 A Well, I made a mistake, I did not intend to  
12 so concede.

13 Q All right; thank you.

14 A I meant to surround that statement with  
15 other things such as organized criminal activity of the nature  
16 which the Congress has found to be part of organized crime,  
17 which Congress has found to also found to be interstate in  
18 character and nature.

19 I have nothing further.

20 MR. CHIEF JUSTICE BURGER: Very well. Thank you,  
21 Mr. Krieger.

22 Mr. Solicitor General.

23 ORAL ARGUMENT BY ERWIN N. GRISWOLD;

24 SOLICITOR GENERAL OF THE UNITED STATES

25 ON BEHALF OF RESPONDENT



1 MR. GRISWOLD: Mr. Chief Justice and may it  
2 please the Court:

3 This case is here on a writ of certiorari to  
4 review a decision of the Second Circuit Court of Appeals. The  
5 decision there is a divided one, with Judges Feinberg and  
6 Waterman in the majority and Judge Hays writing a dissenting  
7 opinion.

8 The question is solely a constitutional one. No  
9 question with respect to the construction of the statute or  
10 the weight or application of the evidence is involved, and the  
11 question is: whether Title II of the Consumer Protection Act,  
12 enacted in 1968, as a part of the Truth-in-Lending Act,  
13 whether that is constitutional. And specifically Section 894,  
14 which is set forth on page 5 of the Government's brief which  
15 is the statute under which the defendant was indicted and  
16 convicted, provides that whoever knowingly participates in any  
17 way or conspires to do so, and no conspiracy is involved here,  
18 in the use of any extortionate means to collect or attempt to  
19 collect any extension of credit or to punish any person for  
20 the nonrepayment thereof, shall be fined not more than \$10,000  
21 or imprisonment of 20 years, or both.

22 Now, in addition to that there is included in the  
23 statute specific findings by Congress and these are set forth  
24 on pages 2 and 3. They are the result of extensive considera-  
25 tion and hearings in Congress and by other agencies and we

1 have outlined, beginning on page 26 of our brief the nature  
2 of the information which was before Congress, but I would  
3 point out that it includes extensive consideration of a report  
4 by the New York State Commission and investigation on the  
5 loan shark racket --

6 Q May I ask, Mr. Solicitor General: to what  
7 is that reference in the last sentence of Section 2 of the  
8 findings at page two, the exclusionary rules?

9 A Section?

10 Q Subsection 2 of the findings on page 2 of  
11 your brief. The last sentence makes a reference to factors  
12 which have rendered past efforts at prosecution almost wholly  
13 ineffective has been the existence of exculsionary rules of  
14 evidence stricter than necessary for the protection of the  
15 constitutional rights.

16 A Yes, sir, Your Honor.

17 Q I can't find it anywhere.

18 A I don't know. I'll ask Mr. Reynolds to  
19 give me a note if he has any idea what that refers to.

20 In addition to the New York Report it was re-  
21 ferred to and summarized before the Report of the President's  
22 Commission on Law Enforcement and the Administration of Justice,  
23 which is before Congress and two of the task force reports of  
24 that commission which were before Congress. And furthermore,  
25 there was further information before Congress on the basis of

1 which, by formal enactment the Congress makes the following  
2 claims:

3 (1) organized crime is interstate and inter-  
4 national in its character.

5 And, skipping to the end of that paragraph, a  
6 substantial part of the income of organized crime is generated  
7 by extortionist credit transactions. And then extortionist  
8 credit transactions are characterized by the use or the  
9 express or implicit threat of the use of violence or other  
10 criminal means to cause harm to a person's reputation or  
11 property as a means of enforcing the payment. And then the  
12 sentence that I cannot give more information about. And two  
13 more paragraphs relating to findings by Congress with respect  
14 to extortionist credit being carried on extensively in inter-  
15 state and foreign commerce and through the means and instru-  
16 mentalities of such commerce and even where it says these  
17 credit transactions are truly intrastate in character, they  
18 nevertheless directly affect interstate and foreign commerce.  
19 And, extortionist credit transactions directly impair the  
20 effectiveness and frustrate the purposes of the laws enacted  
21 by Congress on the subject of bankruptcy and on the basis of  
22 these findings the Congress determined that the provisions of  
23 the statute, including that involved here, are necessary and  
24 proper for the purpose of carrying into execution the powers  
25 of Congress to regulate commerce and establish uniform

1 and effective laws on the subject of bankruptcy.

2 Q Do you rely at all on the bankruptcy  
3 clause?

4 A Yes, Mr. Justice, but I will rely on our  
5 brief for that. It is, as a practical matter, impossible for  
6 a person in the position of the man involved here to get the  
7 benefit of the Bankruptcy Act because he may get a discharge  
8 in court, but he will also get a broken arm or worse from the  
9 usurers who are involved here. He is afraid to seek bank-  
10 ruptcy and the purpose and policy of the Bankruptcy Act is, in  
11 fact, thwarted by the extortionate credit methods.

12 Q Mr. Solicitor General, in a criminal statute  
13 like this is, what degree of extortion is necessary? It is  
14 the one thing that worries me.

15 A I don't really know, Mr. Justice, but I  
16 think it was conceded here that there was an adequate degree  
17 of extortion. If you had a case where only words were used:  
18 "Now, really you are a very low fellow because you don't repay  
19 me and I will not think well of you until you repay me." Now,  
20 whether that is extortion or not, I do not know.

21 The amount of threats or violence considered or  
22 effective in carrying that reputation to --

23 Q Well, what would happen if I loaned Joe  
24 Louis some money and he didn't pay me. And I said: "If you  
25 don't pay me I'm going to injure you." That wouldn't be

1 extortion.

2 A If you don't pay me --

3 Q I might injure you.

4 A Yes, I think that would be extortion.

5 Q To Joe Louis?

6 A A threat to do bodily harm, it seems to me  
7 would be to be a clear instance of extortion.

8 Q Then your answer to Mr. Krieger is that  
9 these horrors(?) that he defines about the automobile accident  
10 and all, they are just not covered by the statute?

11 A Mr. Krieger, I think, made the statute much  
12 broader than Congress has written it. Congress has applied  
13 this test to extortionist credit transactions as --

14 Q A real threat.

15 A -- as a real threat; yes. I think there  
16 may be a question of degree as to whether \_\_\_\_\_ words come  
17 within it. There certainly is no problem about it here. The  
18 man involved in this case had the familiar name of Miranda.  
19 He was 26 years old and since the age of 16 he had worked in a  
20 butcher shop and he was married and he wanted to set up his  
21 own shop, which he did. He got credit from suppliers, but he  
22 found he needed more cash in order to put in the shelving and  
23 to have a larger stock to make it more effective and he went  
24 to the Chase Manhattan Bank; he couldn't get a loan, under-  
25 standably. He sought information from the Small Business



1 Administration, and was told it would take eight weeks to  
2 process an application; that he needed the money sooner.

3 A friend told him that he could get the money  
4 through the defendant in this case. He met him in a restaur-  
5 ant; he asked for \$1,000. The defendant went off and made a  
6 telephone call and came back and said he could provide this  
7 \$1,000, indicating that there was somebody higher up. He came  
8 back 15 minutes later and handed him \$1,000. The arrangement  
9 was that he was to pay \$105 a week for 14 weeks, which would  
10 be \$1,470 or \$470 interest in rather less than a third of a  
11 year.

12 Thereafter he demanded \$130 a week, which was  
13 paid for a while. After a while Miranda needed \$2,000 more,  
14 which he got. It was agreed that he make further payments, and  
15 though the record isn't clear he has pieced it out and it  
16 appears to us that Miranda borrowed a total of \$3,000 in  
17 January and March, 1968. By July 1968 he had repaid \$6,000.  
18 He was then told that he still owed \$6,400. Thus, his total  
19 repayment to that date would have been \$12,400 on the \$3,000  
20 loan or interest of \$9,400 on the \$3,000 loan held for less  
21 than six months.

22 Q Was there any question but that that would  
23 have been a crime against the city or the State of New York?

24 A Oh, I have no doubt that this was a crime  
25 against the city and indeed, Congress has expressly provided

1 that nothing in the statute disclosed in any way any local  
2 remedy. The only question is whether it is an effective  
3 offense against the Federal Government, or whether Congress  
4 can make it an offense against the Federal Government.

5 Q Mr. Solicitor, may I ask you: In light of  
6 the concession that what happened here constituted extortion  
7 and the challenge to the statute is overbroad, as reaching  
8 other things than that kind of conduct, does the Government  
9 raise any question of the standing of this Petitioner to  
10 challenge the overbreadth of the statute?

11 A Mr. Justice, I don't know that it's a  
12 question of standing. This defendant is the defendant in a  
13 criminal charge. He certainly has standing to be here to  
14 raise any arguments that he can --

15 Q Well, except that I gather he concedes that  
16 his conduct, by any definition, constituted extortion.

17 A Well, but he doesn't concede that it had an  
18 adequate nexus with interstate commerce or with some other  
19 basis of Federal power.

20 Incidentally, although Congress made no --

21 Q Mr. Solicitor General, perhaps the  
22 Petitioner can straighten us out later, but I hadn't under-  
23 stood that any such concession was made; I have understood  
24 that the claim in this case is that this statute was beyond  
25 the constitutional power of Congress to enact.

1                   A       Yes, Mr. Justice.

2                   Q       Right.

3                   A       Because the statute does not itself have  
4 any requirement in it that the particular transaction must be  
5 assumed to have a relation to interstate commerce.

6                   Q       Well, I understand --

7                   Q       Well, perhaps we ought to ask him, but  
8 I thought in the colloquy with Mr. Justice Stewart he had said  
9 this conduct might be made a crime by the Congress, period.

10                  A       But that --

11                  Q       This statute --

12                  A       -- he then sought to withdraw from that  
13 later on.

14                       But, let me say: I wanted to take some time to  
15 refer to the particular extortionate acts as they are outlined  
16 on pages 7 to 9 of our brief and they did include strong  
17 threats of violence, not only to Mr. Miranda, but also to his  
18 wife.

19                       As I have been working on this case I found myself  
20 repeatedly with the feeling that I have heard this record  
21 before. By that I don't mean that it is an easy case, but it  
22 obviously presents a problem in Federalism, but I think it can  
23 fairly be called a problem in constructive or creative Feder-  
24 alism.

25                       Indeed, has that not been the history of this

1 Court's decisions under the Commerce Clause, beginning with  
2 Gibbons and Ogden 140 years ago. It's true that there was a  
3 time when the Court took a rather narrow view of the Commerce  
4 Clause, as in Hammer and Dagenhart and in Carter against the  
5 Carter Coal Company.

6 But those decisions did not stand the test of  
7 time and have been overruled. And in many other cases it has  
8 often been urged by the Court, often by distinguished counsel,  
9 that the particular actions taken by Congress extended unduly  
10 the lines circumscribing Federal power.

11 None of these cases was easy, but again and again  
12 the Court has upheld the exercise of Federal power under the  
13 Commerce Clause and as time goes on it becomes clearer and  
14 clearer in the view of history that these decisions have been  
15 sound and have indeed contributed to the working of an effec-  
16 tive government. And I refer to the National Labor Relations  
17 Act, the Fair Labor Standards Act, and many others which have  
18 been upheld.

19 Nearly 50 years ago in 1922, then Professor Felix  
20 Frankfurter wrote: "The decisions under the Commerce Clause  
21 either allowing or confining state action, are at bottom, acts  
22 of statesmanship." And he quoted a passage from an article  
23 which had just been published in 1922 by Thomas Reed Powell  
24 of the then Columbia Law School.

25 Professor Powell said: "The Court has drawn its

1 lines where it has drawn them because it has thought it wise  
2 to draw them there. And the wisdom of its wisdom depends  
3 upon the judgment about practical matters and not upon know-  
4 ledge of the constitution." And he wrote a passage to which  
5 I would like to refer in the general portion of my argument.  
6 It comes from a decision of this Court more than 25 years ago.

7 "The interpenetrations of modern society have not  
8 wiped out state lines. It is not for us to make inroads upon  
9 our Federal system, either by indifference to its maintenance  
10 or excessive regard for the unifying forces of modern techno-  
11 logy. Scholastic reasoning may prove that no activity is  
12 isolated within the boundaries of a single state, but that  
13 cannot justify assertion of legislative power by the United  
14 States over its every activity.

15 "On the other hand, the old admonition never  
16 becomes stale that this Court is concerned with the bounds of  
17 legsl power and not with the bounds of wisdom in its exercise  
18 by Congress. When the conduct of an enterprise affects Congress  
19 among the states it is a matter of practical judgment, not to  
20 be determined by abstract notions. The exercise of this prac-  
21 tical judgment the constitution entrusts primarily and very  
22 largely the Congress, subject to the latter's control by the  
23 electorate. Great power was thus given to the Congress: the  
24 power of legislation and thereby the power of passing judgment  
25 upon the needs of a complex society. Strictly confined, though



1 far-reaching power was given to this Court; that of  
2 determining whether the Congress has exceeded limits allowable  
3 and reasonable for the judgment which it has exercised. To  
4 hold that to affect what men of practical affairs would call  
5 'commerce' and to deem them related to such commerce merely by  
6 gossamer threads and not by solid ties, would be to disrespect  
7 the judgment that is open to men who have the constitutional  
8 power and responsibility to legislate to the nation."

9 And that comes from this Court's opinion in  
10 Polish National Alliance against the National Labor Relations  
11 Board decided in 1944.

12 I know of no decision of this Court which, as a  
13 precedent, clearly requires a decision in favor of the govern-  
14 ment in this case, but the problem here is thoroughly boxed in  
15 by many decisions which are now an established part of the  
16 Court's jurisprudence. Perhaps the closest and most important  
17 is a decision of more than 50 years ago of the great opinion by  
18 Justice Hughes in the Shreveport case in 234 U.S.

19 The statute involved in that case was in general  
20 terms, without any reference to or limitation to acts burdening  
21 or affecting interstate commerce. Congress provided that, and  
22 I am quoting from page 355 and 356 of the opinion in the  
23 Shreveport case: "That it shall be unlawful for any common  
24 carrier subject to the provisions of this act to make or give  
25 any undue or unreasonable preference or advantage to any

1 particular person, company, firm or corporation or locality  
2 in any respect whatsoever, or to subject any particular person,  
3 company, firm, corporation or locality to any undue or un-  
4 reasonable prejudice or disadvantage in any respect  
5 whatsoever."

6 And there is no limitation in that statute with  
7 respect to interstate commerce and the Court will recall that  
8 in the Shreveport case the court held that the statute was  
9 broad enough to apply to discrimination in intrastate commerce  
10 and that Congress had the constitutional power to enact that  
11 statute.

12 We come a good many years later to the National  
13 Labor Relations Act. The first great decision there was  
14 National Labor Relations Board against Jones and Laughlin  
15 Steel Company in 301 U.S. That statute, by its terms is  
16 applicable to manufacturing, but it refers to matters which  
17 are in commerce or affecting commerce. Thus, it is a statute  
18 which is worded somewhat differently than the one here, but the  
19 language of the Court is instructive on page 37 of 301 U.S.  
20 "Undoubtedly the scope of this power must be considered in the  
21 light of our dual system of government and may not be extended  
22 so as to embrace effects upon interstate commerce solely direct  
23 and remote; that to embrace them in view of our complex  
24 society would effectually obliterate the distinction between  
25 what is national and what is local and create a completely

1 centralized government."

2 And we, of course, make no contention for any-  
3 thing of that sort here. We make no suggestion that, as my  
4 opponent has said that all extortion would be subject to  
5 Federal regulation. The only extortion which is involved here  
6 is with respect to a credit transaction. There are other  
7 powers besides the Commerce power and the Bankruptcy power  
8 which involved credit; the power, for example, to coin money  
9 and regulate the value thereof, is the foundation for the whole  
10 national bank system, the Federal Reserve System and indeed,  
11 for the publicity provisions of the Truth-in-Lending Act of  
12 which this statute is a part.

13 We all know the elementary economics, from the  
14 elementary economics the effect of credit on the money supply  
15 and certainly that is involved in this case.

16 Now, the next case to which I would refer is:  
17 United States against Darby, in 312 U. S. This was a criminal  
18 case, incidentally. I don't make anything of the point that  
19 Judge Hays did in dissent, that this is a criminal statute.  
20 Of course criminal statutes must be carefully and narrowly  
21 construed, but more no question of construction is raised in  
22 this case. If Congress has power in this area I have no doubt  
23 that it has power to exercise, to impose a criminal sanction,  
24 as well as a penalty, which was involved in Wickard v. Filburn,  
25 or regulation, as was involved in the National Labor

1 Relations Act.

2 But, in United States against Darby was a  
3 criminal statute; it is applicable to goods, by its terms, to  
4 people who are engaged in commerce or in the production of  
5 goods for commerce, but that has been broadly extended in  
6 recent years, and for example, there isn't the slightest  
7 doubt that Mr. Miranda, if he had been successful in operating  
8 his butcher shop would have been subject to the Fair Labor  
9 Standards Act or could have been made subject to it and also  
10 to the National Labor Relations Act.

11 Q Well, he would probably also have paid the  
12 Federal income tax, but that doesn't really have much to do  
13 with --

14 A No; but the Fair Labor Standards Act and  
15 the National Labor Relations Act turn on their being commerce.

16 Q Mr. Solicitor General, what if, in these  
17 findings that are reproduced here on pages two and three of  
18 your brief, Congress had found not that extortionate credit  
19 transactions -- every place where we now read extortionate  
20 credit transactions, what if Congress had found this about  
21 grand larceny, so that for example the finding had been that a  
22 substantial part of the income of organized crime was gener-  
23 ated by grand larceny, and then a description of how grand  
24 larceny works and grand larceny indirectly impairs the effec-  
25 tiveness and frustrates the purpose of the laws enacted on the

1 subject of bankruptcies also. Every place just grand larceny.

2 And then Congress has proceeded to say that  
3 whoever commits grand larceny or conspires to do so shall be  
4 fined not more than \$10,000 or imprisonment of not more than  
5 twenty years, or both. Would that have been a constitutional  
6 statute?

7 A That would be a much more difficult statute  
8 than this.

9 Q Why?

10 A I can conceive of circumstances which we  
11 haven't gotten to yet, and I hope we never do get, where  
12 organized crime has tentacles which reach so far and so deep  
13 and states find that they are unable to deal with it. I  
14 recall, for example, my earlier experience in the Department  
15 of Justice that the only way it was possible to proceed against  
16 Al Capone in Chicago, was through the Federal income tax. The  
17 state authorities were unable to take appropriate steps and I  
18 can imagine other circumstances not involved here which might  
19 induce Congress to pass such a statute, and if Congress passed  
20 such a statute I have no doubt that this Court would, of  
21 course, give very careful consideration to the thought.

22 Q But how would it have been more difficult  
23 than this statute?

24 A Because --

25 Q Or less; or less.



1           A       Because at the present time there is no  
2 factual basis that I know of for such a statute and it seems  
3 to me perfectly obvious that based on the facts of this case  
4 that the extortionate credit transaction here directly dealt  
5 with a man who was trying to engage in commerce as a --

6           Q       The same thing would have happened if some-  
7 body had stolen \$12,000 from him; just exactly the same thing.

8           A       Such transactions do not so frequently  
9 recur as to be a matter which is a proper basis for national  
10 concern. Whereas, loan sharking is on the basis of a half a  
11 billion dollars a year, at least, in the economy. It is a  
12 major factor --

13          Q       I wonder how much is stolen every year by  
14 -- in grand larceny.

15          A       What about --

16          Q       My guess would be there is considerably  
17 more stolen every year than is extorted in credit transactions.  
18 If not more; I wonder if Congress knows.

19          A       Maybe you will persuade me that such a  
20 a Federal statute would have a congressional --

21          Q       Mr. Solicitor General --

22          A       -- foundation. It is not involved here and  
23 I think that the factual basis for saying that loan sharking  
24 has an important bearing on commerce, is a strong one.

25          Q       Mr. Solicitor General, suppose Perez loaned

1 money to a housewife engaged in no business whatsoever, ex-  
2 cept buying household goods, and threatened her. Would that  
3 be under this statute?

4 A Mr. Justice, I think that would be under  
5 the statute. It would be a very much harder case than this,  
6 but on such a matter a case like Wickard and Filburn seems to  
7 me to be very instructive.

8 Q What would happen --

9 A That involved the growing of 239 bushels  
10 of wheat on an intrastate farm in the center of the state,  
11 which wheat was all consumed on that farm and the Court held  
12 that the penalty provisions of the Agricultural Adjustment Act  
13 were valid and applicable to that case. It was argued that  
14 what was involved was farming and not \_\_\_\_\_ commerce; that  
15 the Court -- there is a particular passage, but even -- this  
16 is on page 125: "But even if Appellees' activity be local and  
17 though it may not be regarded as commerce, it may still,  
18 whatever its nature, be reached by Congress if it exerts a  
19 substantial economic effect on interstate commerce.

20 "And this, irrespective of whether such effect is  
21 what might at some earlier time have been defined as direct  
22 or indirect."

23 And there the 239 bushels of wheat were found to  
24 exert an adequate effect on commerce to sustain the exercise  
25 of Federal power and I'm quite willing to stand on the

1 proposition that if it can be shown on facts put before  
2 Congress that grand larceny has a substantial deterring effect  
3 on commerce, that Congress -- if in its judgment it decided  
4 that it wasn't an appropriate thing for Congress to do, would  
5 have that power and it would be sustained by the Court.

6 But, I repeat that that is not before the Court  
7 here. What we have here is loan sharking and which there is a  
8 large mass of material to support the proposition that it has  
9 an important bearing on commerce.

10 And then I would refer to the case of Katzenbach  
11 against McClung and Heart of Atlanta Motel against the United  
12 States, where the Civil Rights Act of 1964 or '65 was held to  
13 be applicable against a local motel in one case. There the  
14 statute refers to "transient guests." It says nothing about  
15 guests moving in interstate commerce. The transient guests  
16 might all of them been within Georgia, as far as the statutory  
17 language is concerned there, but the Court found no difficulty  
18 with that.

19 And in Katzenbach against McClung this statute  
20 did provide that it served interstate commerce or that a sub-  
21 stantial portion of the food moved in commerce.

22 The last case which seems to me to be very strong  
23 in this area is Maryland against Wirtz, where the Court held  
24 that the Fair Labor Standard Act could be applied to all  
25 employees of a business, even though those employees were not

1 engaged in commerce, if any of the employees were engaged in  
2 commerce.

3 If I may, Mr. Chief Justice, I'd like to make  
4 reference just to one case cited in the Reply Brief of the  
5 Defendant: United States against Denmark which he says controls  
6 this. That is a case 27 years ago where there was no  
7 opinion for the Court. It's rather depressing to see that  
8 these things happened in other times.

9 Three justices held that a statute with respect  
10 to the registration of gambling equipment should not be con-  
11 strued to be applied to the registration of intrastate gam-  
12 bling devices. Two justices: Justices Black and Douglas, the  
13 only two of that Court who are still here, held that the  
14 statute was unconstitutionally vague so that there were five  
15 votes against sustaining the conviction and four justices held  
16 that the statute could be construed to apply and was constitu-  
17 tional.

18 It's clear that there is no judgment or opinion  
19 in that case which is authoritative in this case. Our sub-  
20 mission is that this statute adequately based on findings of  
21 fact made by Congress after full and careful consideration of  
22 a difficult national problem, though not squarely supported by  
23 any prior case, is buttressed up on all sides by firm decisions  
24 of this Court and that the decision below should be affirmed.

25 MR. CHIEF JUSTICE BURGER: Thank you, Mr.

1 Solicitor General.

2 Mr. Krieger we will enlarge your time a bit and  
3 give you three minutes now.

4 Mr. Krieger. Thank you, Mr. Chief Justice.

5 REBUTTAL ARGUMENT BY ALBERT J. KRIEGER, ESQ.

6 ON BEHALF OF PETITIONER

7 MR. KRIEGER: I would like to correct one im-  
8 pression, and that is this apparent concession of mine that  
9 the activities of Mr. Perez would be subject to a Federal  
10 proscription. I do not intend such concession; I intended to  
11 say that perhaps Congress can enact a statute which, upon the  
12 addition of other factors not present in this case, could  
13 reach specific loan sharking. The case at -- that has come  
14 here, affecting the specific type of transaction in which Mr.  
15 Perez engaged, I think is beyond the reach of Congress. It  
16 cannot be the subject of a Congressional enactment.

17 I think that all the necessary points have been  
18 covered, Mr. Chief Justice.

19 Q Mr. Krieger, if all of the small business-  
20 men of this category were put out of business as he was,  
21 obviously the meat market business would go to the large  
22 operators in the supermarkets who do not have the difficulty  
23 -- same difficulty in getting financing.

24 Would you say that that is not enough impact on  
25 commerce, potential impact on commerce to warrant Federal



1 legislation in the field?

2 A Well, I said that that would cover a host  
3 of -- that the same reasoning could be applied to a host of  
4 other activities, particularly the instance which Mr. Justice  
5 Stewart gave in regard to larceny. Certainly any crime which  
6 affects the economic stability of the business then would be  
7 subject to Federal legislation.

8 Q Well, there is a difference, isn't there,  
9 that that sort of larceny has a different impact on a large  
10 supermarket than it does on a small independent marginal  
11 businessman.

12 A Well, certainly if a warehouse of A&P was  
13 broken into and \$100,000 worth of merchandise was stolen. If  
14 Mr. Perez's -- if Mr. Miranda's cash box was rifled by a  
15 thief he might well not survive.

16 I think that the test is not whether we -- the  
17 test is not that the criminal activity may result in the  
18 extermination of the small businessman, because once we apply  
19 that test I think we have opened the floodgates to every type  
20 of criminal activity.

21 If the man did not carry automobile insurance and  
22 he was in an accident and was compelled to pay a heavy judg-  
23 ment he would similarly be out of business.

24 Q Has not Congress made a finding that this  
25 activity, loan sharking, is widespread in small business

1 operators in extensive hearings that were conducted here?

2 A They made a finding so that loan sharking  
3 activity is not restricted in any respect to small business  
4 activity. They have found that loan sharking is generally  
5 utilized by the person who is unavailable -- who finds other  
6 credit unavailable, be he a small businessman or a large  
7 businessman. They gave instances of people in substantial  
8 businesses who turn to loan sharks because of their financial  
9 situation.

10 MR. CHIEF JUSTICE BURGER: Thank you Mr. Krieger;  
11 thank you, Mr. Solicitor General.

12 The case is submitted.

13 (Whereupon, at 11:10 o'clock a.m. the argument in  
14 the above-entitled matter was concluded)