YOU SHALL GO NO FURTHER: THE HOBBS ACT AND THE EXPANSION OF FEDERAL CRIMINAL JURISDICTION

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The Hobbs Act[1] was adopted in 1946 to combat what was, at the time, most frequently referred to as "extortion," "paying of tribute," or, more colorfully, "highway robbery."[2] Congressional debate from the time indicates that the Act was crafted to target a growing problem in urban areas around the United States: the forced payment of fees for farmers delivering goods to market.[3] At the time, farmers would be stopped upon entering major cities and be forced to either pay a fee or hire a union driver to deliver their goods the remaining distance to local markets.[4] Thus, the "robbery" was most often referred to as "extortion" or "paying of tribute," and was really only called "robbery" when referencing the place where the crime would happen: on the highway.[5] However, when Congress sought to solve the problem, the term "robbery" made its way into the Act.[6] This historical fluke happened despite congressional discussion of any intent to reach actual robberies that may occur after the point at which goods had reached market.[7]

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[1] 18 U.S.C. § 1951.

[2] United States v. Miles, 122 F.3d 235, 244 (5th Cir. 1997).

[3] 91 CONG. REC. 11,911 (1945).

[4] Miles, 122 F.3d at 244.

[5] *Id.*

[6] *Id.*

[7] *Id.* The Congressional debate at the time clearly focused on the issue of "highway robbery," not general robbery:

> Here comes a farmer with a load of produce -- milk, butter, eggs, vegetables, potatoes, things he has raised and produced upon his farm. He owns that property. Into it has gone his toil and his sweat, and that of his wife and children, some of whom may accompany him. As they near a State line in going to market to sell the produce a thug they never saw before or a coterie of thugs comes up to the truck and says, "Here, stop your truck." The farmer says, "Why, I do not want to stop my truck. I am going to market." The thug says, "Yes; but you stop your truck now." The farmer asks, "Well, what do you want?" The thug, "I want $ 9.42 if it is a big truck or $ 8.41 [if] it is a little truck."
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> The farmer says, "I don't want to pay it. I don't need your help." The thug says, "Yes; but if you do not pay me I will knock you in the head and knock your child or your wife in the head." Maybe it is the man's wife who is with him. Then, in fear, not wishing to be mutilated or

Though the Hobbs Act may have been designed to affect only those "robberies" occurring on the highway, its reach has since grown much larger. In *United States v. Culbert*, the Supreme Court held that the Hobbs Act was not limited to acts of racketeering but included robbery and extortion traditionally addressed through state laws.[8] Since then, in cases such as *United States v. Rivera-Rivera*,[9] lower courts have held that a *de minimus* interference with interstate commerce is sufficient to sustain a Hobbs Act conviction.[10] Accordingly, the First Circuit Court of Appeals held in *Rivera-Rivera* that where a lottery business was robbed, the facts that the lottery machines were manufactured out of state and that the business occasionally served tourists were sufficient to qualify as an interference with interstate commerce.[11] This *de minimus* standard has been applied in several other circuits[12] and cases with a tenuous effect on

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> perhaps killed, and not desiring to see his wife and child killed, the farmer pays the money.

91 CONG. REC. 11,911 (1945) (statement of Rep. Jennings). Consider also:

> Hon. Joe Eastman, then head of the Office of Defense Transportation, told me that his examiners reported 1,000 trucks a night being held up and robbed in various cities of this Union from Los Angeles to Seattle, across through Milwaukee, Chicago, and through Scranton, Pa., which was another hot spot, Philadelphia, New York, and over 100 a day at the New York end of the Holland Tunnel. He was there begging as a witness in 1943, pleading the cause of defense transportation, and called attention to the numbers and numbers of trucks loaded with shells and guns for our Army and Navy which were held up and robbed by those goons at the mouth of the Holland Tunnel.
> *Id.* at 11,912 (statement of Rep. Hobbs).

Id. at 244 n.1.

[8] 435 U.S. 371, 380 (1978) ("Our examination of the statutory language and the legislative history of the Hobbs Act impels us to the conclusion that Congress intended to make criminal all conduct within the reach of the statutory language. We therefore decline the invitation to limit the statute's scope by reference to an undefined category of conduct termed 'racketeering.'").

[9] 555 F.3d 277, 285 (1st Cir. 2009).

[10] Patrick Goodwin, *The Hobbs Act Through the Rivera-Rivera Looking Glass: A Mere Instrusion Upon Basic Fundamental Federalism Principles?*, 44 J. MARSHALL L. REV. 237, 245–46 (2010).

[11] *Id.*

[12] *See, e.g.*, United States v. Powell, 693 F.3d 398, 402 (3d Cir. 2012) ("Consistent with the Court's interpretation of the Hobbs Act's 'broad language,' we have stressed that 'proof of a *de minimis* effect on interstate commerce is all that is required' for conviction under the Hobbs Act.") (citations omitted); United States v. Diaz, 248 F.3d 1065, 1092 (11th Cir. 2001) ("The required nexus to interstate commerce only needs to be minimal and, in all four instances, the extortion or attempted extortion affected interstate commerce either by depleting assets of an individual directly engaged in interstate commerce or by diverting assets that would otherwise be expended in

interstate commerce have routinely been upheld[13]. The result is the dramatic expansion of federal jurisdiction into areas traditionally under the purview of the state law.

Justice Thomas lamented this expansion of the Hobbs Act nearly twenty-five years ago in *Evans v. United States*: "Over the past 20 years, the Hobbs Act has served as the engine for a stunning expansion of federal criminal jurisdiction into a field traditionally policed by state and local laws."[14] At the time, Justice Thomas was referring to acts of public corruption by state and local officials, but the critique is equally relevant today in cases of local robbery.

On February 23, 2016, the United States Supreme Court heard oral argument in a case that has the potential to extend the Hobbs Act even further.[15] *Taylor v. United States* poses the question of whether the government must prove beyond a reasonable doubt the interstate commerce element for a Hobbs Act charge if the robbery in question targeted a drug dealer.[16] Taylor was convicted of two counts under the Hobbs Act for committing robberies of people he believed to be drug dealers.[17] No drugs or marijuana were stolen during the robberies, and the only money found was a small sum discovered in a pocketbook.[18] This small sum of money and three cell phones were the only items taken in both robberies together.[19] The District Court sentenced Taylor to

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interstate commerce."); United States v. Atcheson, 94 F.3d 1237, 1243 (9th Cir. 1996) ("[T]he Government need only show that the totality of their actions had a *de minimis* effect on interstate commerce.").

[13] *See, e.g.*, *Powell*, 693 F.3d at 402 (holding that targeting store owners for home robberies satisfies the Hobbs Act because those store owners engage in interstate commerce when at work); *Diaz*, 248 F.3d at 1092 (holding depleting assets of an individual engaged in interstate commerce or diverting assets that might otherwise be expended in interstate commerce sufficient to satisfy the clause); *Atcheson*, 94 F.3d at 1243 (holding theft of victim's out-of-state credit cards and placing phone calls to acquire information about the cards effected interstate commerce).

[14] 504 U.S. 255, 290–91 (1992) (Thomas, J., dissenting).

[15] United States v. Taylor, 754 F.3d 217 (4th Cir. 2014), *cert. granted* Taylor v. United States, No. 14-6166 (U.S. argued Feb. 23, 2016).

[16] Petition for Writ of Certiorari at 2, Taylor v. United States, No. 14-6166 (U.S. argued Feb. 23, 2016) ("Whether, in a federal criminal prosecution under the Hobbs Act, the government is relieved of proving beyond a reasonable doubt the interstate commerce element by relying exclusively on evidence that the robbery or attempted robbery of a drug dealer is an inherent economic enterprise that satisfies, as a matter of law, the interstate commerce element of the offense."). Taylor may have believed his targets were drug dealers, but testimony from trial indicated neither victim was actually engaged in drug dealing and no drugs were found at either robbery. Brief for Petitioner at 10–12, *Taylor*, No. 14-6166.

[17] Brief for the United States at 1–3, Taylor v. United States, No. 14-6166 (U.S. argued Feb. 23, 2016).

[18] Brief for Petitioner at 10–12, Taylor v. United States, No. 14-6166 (U.S. argued Feb. 23, 2016).

[19] *Id.*

twenty-eight years of imprisonment followed by three years of supervised release.[20]

At oral argument, the Justices seemed skeptical that the behavior in question in *Taylor* should constitute a federal violation punishable by twenty years in prison:

> JUSTICE GINSBURG: Still, it's very odd that this is a Federal case. I mean, they in fact, they took, what, a couple of cell phones, $40?
> [COUNSEL FOR GOVERNMENT]: What you're seeing is part of the whole Federal investigation here, if you remember that this was an investigation into the Southwest Goonz, which was a gang that was engaged in particularly violent and dangerous robberies in Roanoke. The DEA tracked about 30 home invasions to this gang. There were other prosecutions. This particular defendant was a bit of a tagalong, and he was prosecuted. But the main participants in this endeavor, which you know, the DEA was contacted by local law enforcement which said this is becoming a serious problem in Roanoke, and DEA came in and busted this gang. This is just one particular defendant.
> CHIEF JUSTICE ROBERTS: The tagalong, he got 20 years.[21]

It isn't immediately clear why the Government chose to charge Taylor with a Federal crime at all. Both Hobbs Act convictions and grand larceny, under Virginia law, are punishable by up to twenty years in prison.[22] From a purely punitive perspective, there is no clear advantage to prosecutors in bringing a Hobbs Act charge in a case like *Taylor*, which involved a local robbery.[23] *Taylor*, however, represents only one example in a long line of cases expanding Hobbs to reach conduct likely never envisioned by the Act's original authors.

In *Taylor*, the Court seems focused on whether the evidence was sufficient to prove the "affects commerce" prong of the Hobbs Act.[24]

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[20] *Id.* at 8.
[21] Transcript of Oral Argument at 36–37, Taylor v. United States, No. 14-6166 (U.S. argued Feb. 23, 2016).
[22] Brief for Petitioner at 4, *Taylor*, No. 14-6166; 18 U.S.C. § 1951; Va. Code Ann. § 18.2-95.
[23] Though Taylor may have believed his targets were drug dealers, no drugs were found at either robbery. Brief for Petitioner at 10–12, *Taylor*, No. 14-6166. Outside of the targeting of marijuana, nothing about this crime seems related to interstate commerce.
[24] Rory Little, *Argument analysis: Sometimes Argument is Not Much Help*, SCOTUSBLOG (Feb. 23, 2016, 9:16 PM),

With prior cases holding that marijuana dealers are inherently involved in "commerce" and thus within federal reach,[25] some are predicting a decision with little effect on the Hobbs landscape.[26] However, such an outcome, despite changing little, would add to the slow and subtle expansion of federal jurisdiction into matters traditionally left to the states. The Hobbs Act was never intended to be a tool to target drug dealers or local robberies.

To be fair, not all courts have acquiesced on the Hobbs Act's march toward reaching ever-increasing realms of conduct. In fact, the Second Circuit refused to condone this expansion in *United States v. Capo*.[27] In *Capo*, the Second Circuit stated that:

> It is the sensitive duty of federal courts to review carefully the enforcement of our federal criminal statutes to prevent their injection into unintended areas of state governance. Exercising that duty, we find it necessary to nullify this attempted application of the Hobbs Act to circumstances it was never meant to reach. Incremental extensions of federal criminal jurisdiction arguably present a more pernicious hazard for our federal system than would a bold accretion to the body of federal crimes. At a minimum, a clear extension of federal responsibility is likely to be sufficiently visible to provoke inquiries and debate about the propriety and desirability of changing the state-federal balance. Less abrupt, more subtle expansions, however, such as nearly occurred here, are less likely to trigger public debate, and, yet, over time cumulatively may amount to substantial intrusions by federal officials into areas properly left to state enforcement. By [our] holding . . . , we seek to demarcate a point beyond which congress intended federal prosecutors not to pass.[28]

The Supreme Court has an opportunity in *Taylor* to set such a line of demarcation. It would be wise to reign in the expansion of Federal jurisdiction—to say to prosecutors: you shall go no further.

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http://www.scotusblog.com/2016/02/argument-analysis-sometimes-argument-is-not-much-help/.

[25] *See* Gonzales v. Raich, 545 U.S. 1, 33 (2005).

[26] Little, *supra* note 24.

[27] 817 F.2d 947, 955 (2d Cir. 1987).

[28] *Id.*