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Robbery, Extortion, and Bribery in One Place: A Legal Overview of the Hobbs Act

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Robbery, Extortion, and Bribery in One Place: A Legal Overview of the Hobbs Act

The Hobbs Act proscribes obstructing commerce by means of robbery or extortion or attempting or conspiring to do so. The Act applies to individuals and legal entities alike. It permits prosecutions, although the impact on commerce may be minimal. It condemns the robbery—knowingly taking the property of another by force or threat—of drug dealers, mom-and-pop markets, and multinational corporations.

Attempted Hobbs Act robbery consists of an intent to rob, coupled with a substantial step toward that objective; conspiracy, a scheme of two or more to rob or extort; and accomplice liability, aiding and abetting a Hobbs Act violation of another.

Hobbs Act robbery, punishable by imprisonment for not more than 20 years, often occurs in confluence with the use of a firearm during and in furtherance of its commission, a fact that triggers the mandatory minimum sentences authorized in 18 U.S.C. § 924(c). The facts present in a Hobbs Act robbery case may also implicate violations of (1) the federal racketeering statute punishable by imprisonment for not more than 20 years and (2) the federal money laundering statutes, likewise punishable by imprisonment for not more than 20 years.

Hobbs Act extortion comes in two forms. One is akin to robbery, the other to bribery. Neither requires but a minimal impact on commerce. Both view individuals as well as organizations as potential defendants. As a robbery look-alike, it outlaws the wrongful use of force or fear to induce another to surrender property to which the aggressor has no lawful claim. As a bribery look-alike, it outlaws corrupt *quid pro quos*, *i.e.*, a public official obtaining a payment, to which he is not entitled, in anticipation of the performance of an official act. The proscriptions also apply to attempt or conspiracy to commit either variety of Hobbs Act extortion and may implicate accomplice liability (aiding and abetting) as well.

Hobbs Act extortion in either form is punishable by imprisonment for not more than 20 years. Moreover, in addition to the racketeering and money laundering, the facts in a Hobbs Act extortion case may also implicate the Travel Act, which condemns interstate travel to promote an extortion or bribery scheme and that carries a penalty of imprisonment for not more than five years.

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Introduction

One defendant robbed local drug dealers.¹ A second, a police officer, directed the victims of traffic accidents to a particular body shop for a kickback.² A third, a state governor, accepted lavish gifts from a businessman who hoped to benefit from his largesse.³ All three were prosecuted under the Hobbs Act, the federal criminal statute that outlaws obstructing interstate commerce by robbery or extortion.

The Hobbs Act, 18 U.S.C. § 1951, began as the Anti-Racketeering Act in 1934,⁴ which punished obstructions of commerce “by extortion, violence, coercion, or intimidation.”⁵ Congress recast the statute in the Hobbs Act in 1946⁶ and polished it in 1948 in the revision of federal criminal law.⁷ Except for an adjustment in the fine schedule,⁸ the statute has remained unchanged ever since. The Supreme Court has visited the Hobbs Act on several occasions to review the statute’s related, but very distinct, crimes.⁹ One proscribes robbery and is sometimes used to prosecute street crimes.¹⁰ The other proscribes extortion and is often used to prosecute federal, state, and local public corruption.¹¹ This is a brief overview of the Act and relevant court interpretations of its provisions.

Robbery

The Hobbs Act robbery proscription, described in outline form, condemns the following:

¹ David Taylor participated in the home invasions of two purported drug dealers. The robberies netted Taylor and his cohorts: three cell phones, \$40 in cash, some jewelry, and a marijuana cigarette. The Supreme Court upheld his conviction in *Taylor v. United States*, 136 S. Ct. 2074, 2078 (2016).

² Samuel Ocasio was a Baltimore police officer who encouraged motorists involved in traffic mishaps to have their vehicles repaired at a local auto body shop, for which the shop owners paid him. The Supreme Court upheld his conviction in *Ocasio v. United States*, 136 S. Ct. 1423, 1427 (2016).

³ In *McDonnell v. United States*, the Supreme Court overturned Governor McDonnell’s conviction because the services he performed for his benefactor did not constitute the kind of “official acts” covered by the Hobbs Act. 136 S. Ct. 2355, 2375 (2016).

⁴ PUB. L. NO. 73-376, 48 Stat. 979 (1934), 18 U.S.C. §§ 420a to 420e (1940 ed.), now as amended, 18 U.S.C. § 1951.

⁵ 78 CONG. REC. 5735 (1934) (quoting a Department of Justice memorandum requesting the statute).

⁶ PUB. L. NO. 79-486, 60 Stat. 420 (1946), 18 U.S.C. §§ 420a to 420e-1 (1946 ed.).

⁷ PUB. L. NO. 80-772, 62 Stat. 793 (1948), 18 U.S.C. § 1951 (1952 ed.). The 1934, 1946, and current versions of the statute appear as appendixes in *Scheidler v. National Organization for Women, Inc.*, 547 U.S. 9, 23-7 (2006).

⁸ Until 1984, the maximum fine for a Hobbs Act violation was \$10,000. In 1984, without changing the language in specific statutes like the Hobbs Act, the Sentencing Reform Act increased the maximum fines for all federal felonies to \$250,000 for individual defendants and \$500,000 for organizations, unless a particular statute supplied a higher maximum. PUB. L. NO. 98-473, 98 Stat. 1995 (1984), 18 U.S.C. § 3571 (1988 ed.). In 1994, Congress replaced the explicit references to superseded maximum fine amounts in scores of statutes, including the Hobbs Act, with the phrased “fined under this title.” PUB. L. NO. 103-322, 108 Stat. 2146-147 (1994), *e.g.*, 18 U.S.C. § 1951 (1994 ed.).

⁹ *E.g.*, *McDonnell*, 136 S. Ct. 2355; *Taylor*, 136 S. Ct. 2074; *Ocasio*, 136 S. Ct. 1423; *Sekhar v. United States*, 570 U.S. 729 (2013); *Scheidler*, 547 U.S. 9; *Evans v. United States*, 504 U.S. 255 (1992); *McCormick v. United States*, 500 U.S. 257 (1991); *United States v. Culbert*, 435 U.S. 371 (1978); *United States v. Enmons*, 410 U.S. 396 (1973); *Callahan v. United States*, 364 U.S. 587 (1961); *Stirone v. United States*, 361 U.S. 212 (1960).

¹⁰ *E.g.*, *Taylor*, 136 S. Ct. at 2078 (home invasion robbery of a drug dealer); *United States v. Rose*, 891 F.3d 82, 83 (2d Cir. 2018) (street robbery of ATM withdrawals); *United States v. Lopez*, 860 F.3d 201, 205 (4th Cir. 2017) (robbery of a brothel).

¹¹ *E.g.*, *Ocasio*, 136 S. Ct. at 1427 (police officer); *McDonnell*, 136 S. Ct. at 2361 (state governor); *United States v. Fountain*, 792 F.3d 310, 314-15 (3d Cir. 2015) (Internal Revenue Service employee).

- (1) Whoever
 - (2) in any way or degree
 - (3) (a) obstructs,
 - (b) delays, or
 - (c) affects
 - (4) (a) [interstate or foreign] commerce or
 - (b) the movement of any article or commodity in commerce,
 - (5)(a) by robbery, *i.e.*,
 - (i) [knowing and willful]
 - (ii) unlawful taking or obtaining of personal property
 - (iii) (A) from the person or
 - (B) in the presence of another,
 - (iv) against his will,
 - (v) by means of actual or threatened (A) force,
 - (B) or violence, or
 - (C) fear of injury,immediate or future,
 - (vi)(A) to his person or property,
 - (B) or property in his custody or possession,
 - (C) or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtainingor (b) attempts or
 - (c) conspires so to do, or
 - (d) commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section
- shall be fined under this title or imprisoned not more than twenty years, or both.¹²

Whoever

As a general rule, the word “whoever” includes not only individuals, but also “corporations, companies, associations, firms, partnerships, societies, and joint stock companies . . .”¹³ Thus, corporations, labor organizations, and other legal entities may be liable for Hobbs Act violations committed by the entity’s officers, employees, or members within the scope of their authority and for the benefit of the legal entity.¹⁴

In Any Manner ... Obstructs ... Commerce

The Hobbs Act defines “commerce” as (1) commerce into or out of a state; (2) commerce into, out of, or within the District of Columbia or any U.S. territory or possession; or (3) all other commerce over which the United States has jurisdiction.”¹⁵ The Supreme Court has

¹² 18 U.S.C. § 1951(a), (b)(1), (b)(3).

¹³ *Id.* § 1.

¹⁴ *Jund v. Town of Hempstead*, 941 F.2d 1271, 1283-84 (2d Cir. 1991) (criminal liability for a Hobbs Act-predicated racketeering violation); *see generally* *United States v. Oceanic Illsabe Ltd.*, 889 F.3d 178, 194-95 (4th Cir. 2018); *United States v. Agosto-Vega*, 617 F.3d 541, 552-53 (1st Cir. 2010); *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1118 (D.C. Cir. 2009); CRS Report R43293, *Corporate Criminal Liability: An Overview of Federal Law*, by Charles Doyle.

¹⁵ 18 U.S.C. § 1951(b)(3) (“The term ‘commerce’ means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.”).

acknowledged that the Hobbs Act’s jurisdictional language “manifests a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery, or physical violence.”¹⁶

Nevertheless, the Constitution confines Congress’s legislative authority under the Commerce and Necessary and Proper Clauses to enactments regulating (1) the channels of commerce, (2) the instrumentalities of commerce, or (3) the activities that substantially affect commerce.¹⁷

“[A]ctivities within this third category—those that ‘substantially affect’ commerce—may be regulated so long as they substantially affect interstate commerce in the aggregate, even if their individual impact on interstate commerce is minimal.”¹⁸

In the case of the Hobbs Act where Congress sought to exercise its Commerce Clause powers to the fullest, the courts have held that the impact on commerce in an individual case may be minimal, even *de minimis*.¹⁹ Examples include:

- robbery of a business that sells products that originate in another state;²⁰
- robbery that results in a business having to temporarily close down;²¹
- robbery that depletes the assets available to a business;²²
- robbery of a drug dealer;²³
- in some instances, robbery of an individual who regularly engages in interstate commerce;²⁴

¹⁶ *Taylor v. United States*, 136 S. Ct. 2074, 2079 (2016) (quoting *Stirone v. United States*, 361 U.S. 212, 215 (1960)).

¹⁷ *United States v. Lopez*, 514 U.S. 549, 558-59 (1995); *United States v. Morrison*, 529 U.S. 598, 608-619 (2000).

¹⁸ *Taylor*, 136 S. Ct. at 2079.

¹⁹ *United States v. Rose*, 891 F.3d 82, 86 (2d Cir. 2018) (“It is the law in our circuit that if the defendants’ conduct produces any interference with or effect upon interstate commerce, whether slight, subtle or even potential, it is sufficient to uphold a prosecution under the Hobbs Act.”); *see also* *United States v. Lopez*, 860 F.3d 201, 214 (4th Cir. 2017) (“As we have explained, the jurisdictional predicate of the Hobbs Act requires only a minimal effect on interstate commerce—including one so minor as to be *de minimis*...”); *United States v. Guerrier*, 669 F.3d 1, 7 (1st Cir. 2011) (“Even in a prosecution for disrupting illegal commerce, the government need not show a substantial interference—a *de minimis* one will do. Certainty of a *de minimis* effect is not required either. A realistic probability suffices. And even potential future effects may be enough. When it comes down to it, little is needed to cross this very low threshold.”).

²⁰ *United States v. Daniel*, 887 F.3d 350, 358 (8th Cir. 2018) (“The Hobbs Act robbery victim need not be a large, interstate chain. Rather, robberies from small commercial establishments qualify as Hobbs Act violations so long as the commercial establishments deal in goods that move through interstate commerce.”); *United States v. Carr*, 652 F.3d 811, 813 (7th Cir. 2011).

²¹ *United States v. Chaplain*, 864 F.3d 853, 858 (8th Cir. 2017); *United States v. Ransfer*, 749 F.3d 914, 936 (11th Cir. 2014)

²² *Chaplain*, 864 F.3d at 858; *United States v. Wrobel*, 841 F.3d 450, 455 (7th Cir. 2016)

²³ *Taylor*, 136 S. Ct. at 2081 (“Rather, to satisfy the Act’s commerce element, it is enough that a defendant knowingly stole or attempted to steal drugs or drug proceeds, for, as a matter of law, the market for illegal drugs is commerce over which the United States has jurisdiction. And it makes no difference under our cases that any actual or threatened effect on commerce in a particular case is minimal.”).

²⁴ The courts are more reluctant to find a minimal impact on commerce when a private individual rather than a business is the robbery victim. *Rose*, 891 F.3d at 86 (“We have found the jurisdictional element satisfied when the victim of robbery is an individual, as opposed to a business, in the following circumstances: (i) where the victim directly participated in interstate commerce; (ii) where the defendant targeted the victim because of her status as an employee at a company participating in interstate commerce; (iii) where the assets of a company engaged in interstate commerce were, or would have been depleted as a result of the harm or potential harm, respectively, to the individual; or (iv) where the defendant targeted the assets of a business engaged in interstate commerce rather than an individual. But where the only connection to interstate commerce is that the victim works for a company engaged in interstate

- in some instances, robbery of a substantial number of individual victims or of a substantial amount from a single individual;²⁵ and
- in some instances, robbery of an individual targeted because of his relation to commerce.²⁶

Robbery

Section 1951(b)(1) defines the word “robbery” as:

[T]he unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

The Hobbs Act’s robbery definition is built upon the common law, and consequently conviction requires proof of the use, threat, or fear of violent physical force.²⁷

Knowingly

Although the statute has no explicit statement of mind (*mens rea*) requirement, a Hobbs Act robbery conviction likely requires evidence that the defendant committed robbery “knowingly.”²⁸ In most instances, the word “knowingly” means that the defendant consciously engaged in the conduct that the law proscribes.²⁹ Congress’s inclusion of the term “force or violence” within the

commerce, the link between the crime and interstate commerce is simply to attenuated to support federal Hobbs Act jurisdiction.”); *United States v. Rutland*, 705 F.3d 1238, 1245 (10th Cir. 2013) (“Although we have never considered this question, a majority of circuits do, in fact, require a more substantial showing that the robbery affected interstate commerce to sustain a Hobbs Act conviction when the victim is an individual.”); *United States v. Powell*, 693 F.3d 398, 403 (3d Cir. 2012).

²⁵ *United States v. Vichitvongsa*, 819 F.3d 260, 271 (6th Cir. 2016); *Rutland*, 705 F.3d at 1245; *Powell*, 693 F.3d at 403.

²⁶ *Rose*, 891 F.3d at 86; *Vichitvongsa*, 819 F.3d at 271; *Rutland*, 705 F.3d at 1245.

²⁷ *United States v. Melgar-Cabrera*, 892 F.3d 1053, 1065, 1066 (10th Cir. 2018) (“[T]he force element in common law robbery statutes (*e.g.*, Hobbs Act) can only be satisfied by violent force.... To the extent Mr. Melgar-Cabrera contends that committing Hobbs Act robbery by putting someone in fear of injury does not necessarily constitute the threatened use of physical force because it can be done through indirect force, *Ontiveros* [*United States v. Ontiveros*, 875 F.3d 533 (10th Cir. 2017)] has foreclosed his argument.”); *United States v. Pena*, 161 F. Supp. 3d 268, 276-81 (S.D.N.Y. 2016).

²⁸ *United States v. Garcia-Ortiz*, 904 F.3d 102, 108 (1st Cir. 2018) (quoting *United States v. Frates*, 896 F.3d 93, 98 (1st Cir. 2018) (“The elements of Hobbs Act robbery similarly include ‘an implicit *mens rea* of general intent—or knowledge—as to the *actus reus* of the offense.’”)); *United States v. Gray*, 260 F.3d 1267, 1283 (11th Cir. 2001) (“Moreover, our precedent suggests—and Gray does not squarely contest—that the only *mens rea* required for a Hobbs Act robbery conviction is that the offense be committed knowingly”); *cf.* *Taylor v. United States*, 136 S. Ct. 2074, 2081 (2016) (“Rather, to satisfy the Act’s commerce element, it is enough that a defendant *knowingly* stole or attempted to steal drugs or drug proceeds, for, as a matter of law, the market for illegal drugs is commerce over which the United States has jurisdiction.”) (emphasis added); *Powell*, 693 F.3d at 401 (“We have held that a conviction under the Hobbs Act requires proof beyond a reasonable doubt that (1) the defendant knowingly or willfully committed, or attempted or conspired to commit, robbery or extortion, and (2) the defendant’s conduct affected interstate commerce.”); *United States v. Du Bo*, 186 F.3d 1177, 1179 (9th Cir. 1999) (“Although not stated in the Hobbs Act itself, criminal intent—acting knowingly or willfully—is an implied and necessary element that the government must prove for a Hobbs Act conviction.”).

²⁹ *Dixon v. United States*, 548 U.S. 1, 5 (2006) (quoting *Bryan v. United States*, 524 U.S. 184, 193 (1998)) (“[U]nless the text of the statute dictates a different result, the term ‘knowingly’ merely requires proof of knowledge of the facts

Hobbs Act’s statutory definition of robbery seems to dispense with the need for a more demanding mens rea standard.³⁰ The government, however, need not prove that the defendant intended to obstruct or delay interstate commerce.³¹

Aiding and Abetting, Attempt, and Conspiracy

The Hobbs Act explicitly condemns not just robbery, but also attempts to rob and conspiracies to rob.³² By operation of 18 U.S.C. § 2, it also condemns aiding and abetting a Hobbs Act robbery.³³ All three carry the same penalties as the underlying substantive offense.³⁴ “[A] person is liable under [18 U.S.C.] § 2 for aiding and abetting a crime if (and only if) he (1) takes an affirmative act in furtherance of that offense, (2) with the intent of facilitating the offense’s commission.”³⁵ Ordinarily, the first requirement for aiding and abetting liability is that someone else commits a crime.³⁶ The Hobbs Act, however, encompasses both robbery and attempted robbery. Thus, even though no robbery ever occurs, a defendant may be guilty of aiding and abetting a Hobbs Act violation if he assists someone else’s attempt to commit a Hobbs Act robbery.³⁷

“To be convicted of an ‘attempt,’ a defendant must: (1) have the specific intent to engage in the criminal conduct with which he is charged with attempting; and (2) have taken a substantial step toward the commission of the offense that strongly corroborates his criminal intent.”³⁸ As a

that constitute the offense.’ And the term ‘willfully’ ... requires a defendant to have ‘acted with knowledge that his conduct was unlawful.’”).

³⁰ Cf. *Elonis v. United States*, 135 S. Ct. 2001, 2010 (2015) (quoting *Carter v. United States*, 530 U.S. 255, 261, 269-70 (2000)) (“[I]n *Carter*, we considered whether a conviction under 18 U.S.C. §2113(b), for taking ‘by force and violence’ items of value belonging to or in the care of a bank, requires that a defendant have the intent to steal. We held that once the Government proves the defendant forcibly took the money, ‘the concerns underlying the presumption in favor of scienter are fully satisfied, for a forceful taking—even by a defendant who takes under a good faith claim of right—falls outside the realm of ... otherwise innocent conduct.’”).

³¹ *United States v. Lopez*, 860 F.3d 201, 214 (4th Cir. 2017); *United States v. Buck*, 847 F.3d 267, 276 (5th Cir. 2017); *Powell*, 693 F.3d at 405.

³² 18 U.S.C. § 1951(a) (“Whoever in any way or degree obstructs ... commerce ... by robbery ... or attempts or conspires so to do”).

³³ *Id.* § 2(a) (“Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.”).

³⁴ *Id.* §§ 1951(a), 2. Aiding and abetting, however, is not a separate offense. Instead, one who aids or abets is treated as a principal, that is, as if he had committed the underlying offense himself. *Id.*

³⁵ *United States v. Diaz-Rodriguez*, 853 F.3d 540, 544 (1st Cir. 2017) (quoting *Rosemond v. United States*, 572 U.S. 65, 71 (2014)); cf. *United States v. Gooch*, 850 F.3d 285, 288 (6th Cir. 2017).

³⁶ *United States v. Williams*, 865 F.3d 1328, 1347 (11th Cir. 2017); *United States v. Lange*, 834 F.3d 58, 69 (2d Cir. 2016); *United States v. Gaw*, 817 F.3d 1, 7 (1st Cir. 2016).

³⁷ Cf. *United States v. Villarreal*, 707 F.3d 942, 959 (8th Cir. 2013) (“A jury may convict a defendant ... under any one of four theories: ... or (4) that the defendant aided and abetted the commission of attempted sexual abuse”); *United States v. Bristol-Martir*, 570 F.3d 29, 39 (1st Cir. 2009) (finding evidence sufficient to conviction on a charge of aiding and abetting an attempt to possess narcotics with the intent to distribute, but vacating on other grounds); *United States v. Washington*, 106 F.3d 983, 1003-1004 (D.C. Cir. 1997) (upholding a conviction for aiding and abetting an attempt to possess cocaine with the intent to distribute).

³⁸ *United States v. St. Hubert*, 883 F.3d 1319, 1333 (11th Cir. 2018); see also *United States v. Muratovic*, 719 F.3d 809, 815 (7th Cir. 2013) (quoting *United States v. Sanchez*, 615 F.3d 835, 844 (7th Cir. 2010)) (“Generally a defendant takes a substantial step when his actions make it reasonably clear that had the defendant not been interrupted or made a mistake ... [he] would have completed the crime.”); *United States v. Celaj*, 649 F.3d 162, 171 (2d Cir. 2011). For a general discussion of the federal law of attempt see, CRS Report R42001, *Attempt: An Overview of Federal Criminal Law*, by Charles Doyle.

general rule, conviction does not require successful commission of the attempted offense.³⁹ “Factual impossibility and mistake of fact are not defenses to an attempt” to commit a Hobbs Act robbery as long as the defendant intended to commit the substantive offense and took a substantial step to the satisfaction of that intent acting on facts as he believed them to be.⁴⁰ Nor is abandonment a defense once a substantial step has been taken.⁴¹

“A Hobbs Act robbery conspiracy has three elements—(1) an agreement to commit Hobbs Act robbery between two or more persons, (2) the defendant’s knowledge of the conspiratorial goal and (3) the defendant’s voluntary participation in furthering the goal.”⁴² The general federal conspiracy statute requires the government to prove that one of the conspirators committed some overt act in furtherance of the scheme.⁴³ Hobbs Act robbery conspiracy has no such requirement.⁴⁴ Nevertheless, a conspirator remains liable for crimes committed in furtherance of the scheme until the conspiratorial goal is achieved or the conspirator withdraws.⁴⁵ One court has said that, “[f]or a defendant to show that he withdrew from the conspiracy, proof merely that he ceased conspiratorial activity is not enough.”⁴⁶ Moreover, “he must also show that he performed ‘some act that affirmatively established that he disavowed his criminal association with the conspiracy,’ ... either the making of a clean breast to the authorities, or communication of the abandonment in a manner reasonably calculated to reach co-conspirators.”⁴⁷

Sentencing

Hobbs Act robbery offenses are punishable by imprisonment for not more than 20 years.⁴⁸ In addition, a defendant whose violation involved a firearm may have committed a second, separate offense under 18 U.S.C. § 924(c). Section 924(c) outlaws the use of a firearm during and in furtherance of a crime of violence, and calls for imposition of one of a series of mandatory minimums based on the type of firearm, the circumstances of its use, and the defendant’s earlier

³⁹ United States v. Nguyen, 829 F.2d 907, 917 (8th Cir. 2016); United States v. Williams, 698 F.3d 374, 382 (7th Cir. 2012); United States v. Iribe, 564 F.3d 1155, 1160 (9th Cir. 2009).

⁴⁰ United States v. Wrobel, 841 F.3d 450, 456 (7th Cir. 2016).

⁴¹ United States v. Turner, 501 F.3d 59, 69 (1st Cir. 2007); *see generally* United States v. Young, 613 F.3d 735, 744-45 (8th Cir. 2010).

⁴² United States v. Eshetu, 863 F.3d 946, 955 (D.C. Cir. 2017), *rev’d on other grounds*, 898 F.3d 36 (D.C. Cir. 2018); *see also In re Pinder*, 824 F.3d 977, 979 n. 1 (11th Cir. 2016); United States v. Vichitvongsa, 819 F.3d 260, 270 (6th Cir. 2016).

⁴³ 18 U.S.C. § 371.

⁴⁴ United States v. Salahuddin, 765 F.3d 329, 337-39 (3d Cir. 2014) (citing United States v. Shabani, 513 U.S. 10 (1994); Whitfield v. United States, 543 U.S. 209 (2005)). For a general discussion of federal conspiracy law *see*, CRS Report R41223, *Federal Conspiracy Law: A Brief Overview*, by Charles Doyle.

⁴⁵ United States v. Martinez, 862 F.3d 223, 232-33 (2d Cir. 2017); *see generally* United States v. Smith, 568 U.S. 106, 111 (2013) (internal citations omitted) (“Since conspiracy is a continuing offense, a defendant who has joined a conspiracy continues to violate the law through every moment of the conspiracy’s existence, and he becomes responsible for the acts of his co-conspirators in pursuit of their common plot. Withdrawal terminates the defendant’s liability for post withdrawal acts of his co-conspirators, but he remains guilty of conspiracy.”); United States v. Shephard, 892 F.3d 666, 673 (4th Cir. 2018).

⁴⁶ *Martinez*, 862 F.3d at 233.

⁴⁷ *Id.* (quoting United States v. Eppolito, 543 F.3d 25, 49 (2d Cir. 2008); *see generally* United States v. Sitzmann, 893 F.3d 811, 825-26 (D.C. Cir. 2018); *Shephard*, 892 F.3d at 673; United States v. Belanger, 890 F.3d 13, 31-2 (1st Cir. 2018).

⁴⁸ 18 U.S.C. § 1951(a).

criminal conduct.⁴⁹ Until recently, every federal appellate court to consider the issue had concluded that a Hobbs Act robbery constituted a crime of violence for purposes of section 924(c).⁵⁰ The Supreme Court’s April 2018 decision in *Sessions v. Dimaya*⁵¹ initially raised questions as to the continued validity of that conclusion based on the definition in *Dimaya* of what constitutes a crime of violence.⁵² Section 924(c) defines the term “crime of violence” as a felony either (1) with an element of physical force (the “elements clause”) or (2) that involves substantial risk of physical force (the “risk clause”).⁵³ The Court in *Dimaya* held that a comparably worded risk clause in another statute, 18 U.S.C. 16(b), was unconstitutionally vague.⁵⁴ Lower court cases after *Dimaya* have continued to recognize Hobbs Act robbery as a

⁴⁹ “Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime - (i) be sentenced to a term of imprisonment of not less than 5 years; (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and (iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

“(B) If the firearm possessed by a person convicted of a violation of this subsection - (i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or (ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

“(C) In the case of a second or subsequent conviction under this subsection, the person shall - (i) be sentenced to a term of imprisonment of not less than 25 years; and (ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

“(D) Notwithstanding any other provision of law - (i) a court shall not place on probation any person convicted of a violation of this subsection; and (ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed. ...

“(3) For purposes of this subsection the term ‘crime of violence’ means an offense that is a felony and - (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

“(4) For purposes of this subsection, the term ‘brandish’ means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

“(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section - (A) be sentenced to a term of imprisonment of not less than 15 years; and (B) if death results from the use of such ammunition - (i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and (ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.” 18 U.S.C. § 924(c).

⁵⁰ *United States v. Hill*, 890 F.3d 51, 54 (2d Cir. 2018); *United States v. St. Hubert*, 883 F.3d 1319, 1333 (11th Cir. 2018); *United States v. Diaz*, 863 F.3d 781, 783-84 (8th Cir. 2017); *United States v. Gooch*, 850 F.3d 285, 292 (6th Cir. 2017); *United States v. Buck*, 847 F.3d 267, 274 (5th Cir. 2017); *United States v. Robinson*, 844 F.3d 137, 144 (3d Cir. 2016).

⁵¹ 138 S. Ct. 1204 (2018).

⁵² *See, e.g., United States v. Eshetu*, 898 F.3d 36, 37 (D.C. Cir. 2018) (holding that section 924(c)’s risk clause is unconstitutionally vague).

⁵³ 18 U.S.C. § 924(c)(3).

⁵⁴ *Dimaya*, 138 S. Ct. at 1223.

section 924(c) crime of violence either under the elements clause⁵⁵ or under the theory that section 924(c)'s definition is subject to a different mode of analysis.⁵⁶ Application of section 924(c) is subject to the same Sixth Amendment right to jury consideration and Fifth Amendment rights to grand jury indictment and due process (proof beyond a reasonable doubt) as any other federal felony.⁵⁷

Hobbs Act robbery also qualifies as a racketeering predicate offense and thus as a money laundering predicate offense as well.⁵⁸ A RICO (racketeering influenced and corrupt organization) offense consists, among other things, of conducting the affairs of a commercial enterprise through the patterned commission of a series of predicate offenses, such as Hobbs Act robbery.⁵⁹ RICO violations are punishable by imprisonment for not more than 20 years.⁶⁰

Hobbs Act robbery, by virtue of its status as a RICO predicate offenses, stands as a money laundering predicate offense under 18 U.S.C. §§ 1956, 1957.⁶¹ Section 1956, among other things, proscribes engaging in a financial transaction involving the proceeds of a predicate offense in order to launder the proceeds or to promote further predicate offenses.⁶² Section 1957 proscribes engaging in a monetary transaction using more than \$10,000 of the proceedings of a predicate offense.⁶³ Thus, laundering Hobbs Act robbery proceeds or using the proceeds to facilitate subsequent robberies constitutes a violation of section 1956. By the same token, depositing or engaging in any other monetary transaction involving more than \$10,000 of Hobbs Act robbery proceeds constitutes a violation of section 1957. Violations of section 1956 carry a penalty of imprisonment for not more than 20 years.⁶⁴ Violations of section 1957 carry a penalty of imprisonment for not more than 10 years.⁶⁵

⁵⁵ *United States v. Carthen*, ___ F.3d ___, ___ n. 3 *5 (11th Cir. Oct. 25, 2018); *United States v. Richardson*, ___ F.3d ___, ___ *6 (6th Cir. Oct. 11, 2018); *United States v. Garcia-Ortiz*, 904 F.3d 102, 105-109 (1st Cir. 2018); *United States v. Davis*, 903 F.3d 483, 485-86 (5th Cir. 2018) (but concluding that section 924(c)'s risk clause is unconstitutionally vague); *Melgaro-Cabrera*, 892 F.3d at 1060 n.4; *Hill*, 890 F.3d 54 n.2.

⁵⁶ *United States v. Barrett*, 903 F.3d 166, 184 (2d Cir. 2018) (“Accordingly, because a §924(c)(3)(B) determination can be made by a trial jury based on a defendant’s real-world conduct without raising either due process or Sixth Amendment concerns, *Dimaya* and *Johnson* do not necessarily compel invalidation of Barrett’s conviction on Count Two [under § 924(c)(3)(B)].”); *United States v. Douglas*, ___ F.3d ___, ___ *9-*15 (1st Cir. Oct. 12, 2018).

⁵⁷ *Alleyne v. United States*, 570 U.S. 99, 117 (2013).

⁵⁸ 18 U.S.C. §§ 1961(1)(B), 1956(c)(7)(A), 1957(f)(3).

⁵⁹ *Id.* § 1962(c); *e.g.*, *United States v. Kamahale*, 748 F.3d 984, 993-94 (10th Cir. 2014) (street gang that engaged in armed robberies); *United States v. DeColgero*, 530 F.3d 36, 46-7 (1st Cir. 2008) (gang involved in drug trafficking that robbed competitors); *United States v. Luong*, 393 F.3d 913, 914 (9th Cir. 2004) (gang involved in robbery and drug dealing).

⁶⁰ 18 U.S.C. § 1963(a).

⁶¹ *Id.* §§ 1961(1)(B) (“‘racketeering activity’ means ... (B) any act which is indictable under any of the following provisions of title 18, United States Code: ... section 1951 ...”); 1956(c)(7)(A) (“the term ‘specified unlawful activity’ means—(A) any act or activity constituting an offense listed in section 1961(1) of this title ...”); 1957(f)(3) (“the terms ‘specified unlawful activity’ and ‘proceeds’ shall have the meaning given those terms in section 1956 of this title.”).

⁶² *Id.* § 1956(a); *e.g.*, *United States v. Hatcher*, 323 F.3d 666, 669 (8th Cir. 2003); *United States v. Carcione*, 272 F.3d 1297, 1298 (11th Cir. 2001); *United States v. Procopio*, 88 F.3d 21, 23 (1st Cir. 1996).

⁶³ 18 U.S.C. § 1957(a); *e.g.*, *United States v. Cretacci*, 62 F.3d 307, 309 (9th Cir. 1995).

⁶⁴ 18 U.S.C. § 1956(a)(1).

⁶⁵ *Id.* § 1957(b)(1).

Extortion

Hobbs Act extortion comes in two forms. One, like Hobbs Act robbery, may involve violence. The other is committed “under color of official right.” The two constitute the alternative means by which Hobbs Act extortion is accomplished. Regardless of form, Hobbs Act extortion and Hobbs Act robbery share many of the same elements as is obvious from a display of its components:

- (1) Whoever
 - (2) in any way or degree
 - (3) (a) obstructs,
 - (b) delays, or
 - (c) affects
 - (4) (a) commerce or
 - (b) the movement of any article or commodity in commerce,
 - (5)(a) by extortion, *i.e.*,
 - (i) [knowing and willful]
 - (ii) obtaining the property of another
 - (iii) with his consent
 - (iv) (A) induced by wrongful use of actual or threatened
 - (I) force, or
 - (II) violence, or
 - (III) fear of injury, or
 - (B) under color of official right
 - (b) attempts or
 - (c) conspires so to do, or
 - (d) commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section
- shall be fined under this title or imprisoned not more than twenty years, or both⁶⁶

Whoever

Again, the term “whoever” in federal law refers to an individual as well as to legal entities such as corporations, labor organizations, and unincorporated associations.⁶⁷ A legal entity may incur criminal liability for the conduct of its officers, employees, members, or agents, committed within the scope of their authority, for the benefit, at least in part, of the legal entity.⁶⁸ Hobbs Act extortion does not encompass conduct committed entirely for the benefit of a governmental entity.⁶⁹

⁶⁶ *Id.* § 1951(a), (b)(2).

⁶⁷ 1 U.S.C. § 1.

⁶⁸ *Cf.* *Jund v. Town of Hempstead*, 941 F.2d 1271, 1283-85 (2d Cir. 1991) (upholding liability of an unincorporated association for racketeering (RICO), based on a Hobbs Act extortion predicate); *see generally* *United States v. Oceanic Illsabe Ltd.*, 889 F.3d 178, 194-95 (4th Cir. 2018); *United States v. Agosto-Vega*, 617 F.3d 541, 552-53 (1st Cir. 2010); *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1118 (D.C. Cir. 2009); CRS Report R43293, *Corporate Criminal Liability: An Overview of Federal Law*, by Charles Doyle.

⁶⁹ *Wilkie v. Robbins*, 551 U.S. 537, 563-67 (2007) (concluding, based on common law extortion principles, that Hobbs Act extortion does not encompass the conduct of federal employees committed entirely for the benefit of the U.S. Government).

In Any Manner ... Obstructs ... Commerce

As noted earlier, the Supreme Court recognizes that, in the Hobbs Act, Congress “speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery, or physical violence.”⁷⁰ Thus, Hobbs Act extortion convictions, like Hobbs Act robbery convictions, demand no more than that the government prove some slight, minimal, or *de minimis* impact on interstate or foreign commerce.⁷¹ It is enough that in any individual case the defendant’s conduct has a potential impact on commerce.⁷² For example, the government has met its burden when it shows that “an enterprise, which either is actively engaged in interstate commerce or customarily purchases items in interstate commerce, has its assets depleted through extortion, thereby curtailing the victim’s potential as a purchaser of such goods.”⁷³

Obtaining the Property of Another

The obtaining-property element of Hobbs Act extortion consists of “not only the deprivation but also the acquisition of property.’ ... That is, it requires that the victim part with his property and that the extortionist gain possession of it.”⁷⁴ Moreover, “the property must therefore be transferrable”; it must be something of value that be exercised, transferred, or sold.⁷⁵ Otherwise, the property may be tangible or intangible,⁷⁶ lawful or contraband.⁷⁷

⁷⁰ *Stirone v. United States*, 361 U.S. 212, 215 (1960); *United States v. Culbert*, 435 U.S. 371, 373 (1978). The phrase, “commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section” refers to physical violence in furtherance of a Hobbs Act robbery or extortion. It does not contemplate a separate Hobbs Act offense consisting of violent interference with commerce by some means other than robbery or extortion. *Scheidler v. National Organization for Women, Inc.*, 547 U.S. 9, 16-17 (2006).

⁷¹ *United States v. Temkin*, 797 F.3d 682, 690 (9th Cir. 2015); *United States v. Campbell*, 770 F.3d 556, 572 (7th Cir. 2014); *United States v. Ransfer*, 749 F.3d 914, 936 (11th Cir. 2014); *United States v. Turner*, 684 F.3d 244, 259-60 (1st Cir. 2012); *United States v. Vigil*, 523 F.3d 1258, 1266 (10th Cir. 2006); *United States v. Davis*, 473 F.3d 680, 682 (6th Cir. 2007).

⁷² *Temkin*, 797 F.3d at 690; *Campbell*, 770 F.3d at 572.

⁷³ *Ransfer*, 749 F.3d at 936; *see also Temkin*, 797 F.3d at 690 (conspiracy to extort by threat of violence—plan contemplated international travel and overseas monetary wire transfer); *Campbell*, 770 F.3d at 573 (extortion by threat of violence—commercial sex trafficking); *Turner*, 684 F.3d at 260-61 (extortion under color of right—bribery for liquor license where liquor to be sold would have moved in interstate commerce); *United States v. Carter*, 530 F.3d 565, 572-74 (7th Cir. 2008) (extortion under color or right—depletion of victim assets).

⁷⁴ *Sekhar v. United States*, 570 U.S. 729, 734 (2013) (internal citations omitted) (quoting *Scheidler v. National Organization for Women, Inc.*, 537 U.S. 393, 404 (2003)); *Heinrich v. Waiting Angels Adoption Services, Inc.*, 668 F.3d 393, 407 (6th Cir. 2012).

⁷⁵ *Sekhar*, 570 U.S. at 736 (“In *Scheidler*, we held that protesters did not commit extortion under the Hobbs Act, even though they interfered with, disrupted, and in some instances completely deprived abortion clinics of their ability to run their business. We reasoned that the protesters may have deprived the clinics of an alleged property right, but they did not pursue or receive something of value from the clinics that they could then exercise, transfer, or sell.”); *see also United States v. Silver*, 864 F.3d 102, 114 (2d Cir. 2017); *United States v. McFall*, 558 F.3d 951, 957 (9th Cir. 2009).

⁷⁶ *Silver*, 864 F.3d at 114; *United States v. Coppola*, 671 F.3d 220, 236 (2d Cir. 2012); *Vigil*, 523 F.3d at 1264.

⁷⁷ *United States v. Fazio*, 770 F.3d 160, 167-68 (2d Cir. 2014); *United States v. Cortes*, 757 F.3d 850, 865 (9th Cir. 2014).

Intent

The Hobbs Act has no express state-of-mind element. The defendant need not know or intend that his conduct delays or obstructs interstate or foreign commerce.⁷⁸ Otherwise, the cases suggest that the intent required for Hobbs Act extortion depends on which of the two forms of extortion is at issue. Robbery-like extortion, extortion by means of force or fear, involves the wrongful use of force, violence, or fear to induce the victim to surrender his property. Bribery-like extortion, extortion under color of official right, involves the misconduct of public officials. Bribery-like extortion demands proof that a corrupt official received something to which he was not entitled, knowing that it was the *quid pro quo* for his performance of an official act.⁷⁹ Extortion by means of wrongful force, violence, or fear, on the other hand, requires evidence that the defendant acted knowingly and willfully,⁸⁰ and is marked by the prerequisite that the force, violence, or fear be wrongful.

Two Kinds of Extortion

Wrongful Use of Force, Violence, or Fear

The Supreme Court's 1973 labor violence case, *United States v. Enmons*, complicates the description of Hobbs Act robbery-like extortion. In *Enmons*, the Supreme Court explained that the word "wrongful" as used in the Hobbs Act extortion provision refers to the use of force, violence, or fear to obtain property to which the extortionist has no lawful claim.⁸¹ Thus, the Hobbs Act applies to personal payoffs or feather-bedding extorted by union officials, but it does not reach "the use of violence to achieve legitimate union objectives, such as higher wages in return for genuine services which the employer seeks."⁸²

The Court concluded that the use of force, violence, or fear in *Enmons* was not "wrongful" because the *purpose* for which violence was employed, legitimate labor objectives, was not wrongful.⁸³ Outside of the labor context, however, the lower federal courts have held that the question of Hobbs Act coverage turns on whether the use or threatened use of force, violence, or fear, as a *means* of squeezing property from another, is "wrongful." Legitimate labor objectives aside, the U.S. Courts of Appeals for the First, Seventh, and Ninth Circuits have decided that in the case of Hobbs Act extortion the use or threatened use of force or violence is "inherently wrongful."⁸⁴ As for the fear of economic harm, these courts have said that "the use of legitimate

⁷⁸ *United States v. Jimenez-Torres*, 435 F.3d 3, 10 (1st Cir. 2006); *United States v. Moore*, 363 F.3d 631, 638-39 (7th Cir. 2004), *vac'd on other grounds sub nom.*, *Young & Jackson v. United States*, 543 U.S. 1100 (2005); *United States v. Shareef*, 190 F.3d 71, 75 (2d Cir. 1999); *cf.* *United States v. Buck*, 847 F.3d 267, 276 (5th Cir. 2017).

⁷⁹ *Evans v. United States*, 504 U.S. 255, 268 (1992) ("We hold today that the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts."); *United States v. Repak*, 852 F.3d 230, 251 (3d Cir. 2017); *United States v. Giles*, 246 F.3d 966, 973 (7th Cir. 2001).

⁸⁰ *Fazio*, 770 F.3d at 165; *United States v. Boylan*, 898 F.2d 230, 253 (1st Cir. 1990); *cf.*, *United States v. Didonna*, 866 F.3d 40, 47 (1st Cir. 2017) ("Rather, the government must prove, by direct or circumstantial evidence, that the defendant knew that he was not legally entitled to the property that he either received or attempted to receive.").

⁸¹ 410 U.S. 396, 400 (1973).

⁸² *Id.*; *see also* *United States v. Kirsch*, 903 F.3d 213, 221-22 (2d Cir. 2018).

⁸³ *Enmons*, 410 U.S. at 400.

⁸⁴ *United States v. Burhoe*, 871 F.3d 1, 9 (1st Cir. 2017); *United States v. Orlando*, 819 F.3d 1016, 1024 (7th Cir. 2016) ("[E]xtortion occurs when a person uses physical violence or the threat of violence to obtain property whether or not the defendant has a claim to the property."); *United Brotherhood of Carpenters and Joiners v. Building and*

economic threats to procure property is ‘wrongful’ under the Hobbs Act, only if the defendant has no claim of right to that property.”⁸⁵

Color of Official Right

Hobbs Act extortion under color of official right occurs when a “public official has obtained a payment to which he is not entitled, knowing that the payment was made in return for official acts.”⁸⁶ It is the “rough equivalent” of bribery.⁸⁷ It envisions a corrupt this-for-that (*quid pro quo*).⁸⁸ Nevertheless, “[t]he offense is completed at the time when the public official receives a payment in return for his agreement to perform specific official acts; fulfillment of the *quid pro quo* is not an element of the offense.”⁸⁹ Although the offense implies a coercive relationship, duress is not an element of the offense;⁹⁰ and there is no requirement that a public official request or invite a corrupt payment.⁹¹

The Hobbs Act does not define the term “official act,” but the bribery statute does.⁹² In *McDonnell v. United States*, the Supreme Court turned to the bribery statute’s definition of “official act” in its summary of what constitutes an official act for purposes of Hobbs Act extortion:

In sum, an “official act” is a decision or action on a “question, matter, cause, suit, proceeding or controversy.” The “question, matter, cause, suit, proceeding or controversy” must involve a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee. It must also be something specific and focused that is “pending” or “may by law be brought” before the public official. To qualify as an ‘official act,’ the public official must make a decision or take an action on that “question, matter, cause, suit, proceeding or controversy.” Or

Construction Trades Dep’t, AFL-CIO, 770 F.3d 834, 838 (9th Cir. 2014) (“Where violence or violent threats are concerned, the claim of right defense is strictly limited to employer-union labor disputes.”).

⁸⁵ *Burhoe*, 871 F.3d at 10; *Orlando*, 819 F.3d at 1024 (“[W]here the defendant has a claim of right to property and exerts economic pressure to obtain that property, that conduct is not extortion and no violation of the Hobbs Act has occurred.”); *United Brotherhood*, 770 F.3d at 838.

⁸⁶ *Ocasio v. United States*, 136 S. Ct. 1423, 1428 (2016); *Evans v. United States*, 504 U.S. 255, 268 (1992); *United States v. Buffis*, 867 F.3d 230, 234 (1st Cir. 2017); *United States v. Silver*, 864 F.3d 102, 111 (2d Cir. 2017); *United States v. Kalb*, 750 F.3d 1001, 1004 (8th Cir. 2014); *United States v. Dimora*, 750 F.3d 619, 625 (6th Cir. 2014); *United States v. Siegelman*, 640 F.3d 1159, 1171 (11th Cir. 2011).

⁸⁷ *Ocasio*, 136 S. Ct. at 1428; *Evans*, 504 U.S. at 268; *Buffis*, 867 F.3d at 235 n.5. For a general discussion of federal public corruption law see, Jay Winkelman, *Public Corruption*, 55 AM. CRIM. L. REV. 1565 (2018).

⁸⁸ *McCormick v. United States*, 500 U.S. 257, 273 (1991) (“The United States agrees that if the payments to McCormick were campaign contributions, proof of a *quid pro quo* would be essential for an extortion conviction.”) *Silver*, 864 F.3d at 111 (“To succeed on a bribery theory of ... Hobbs Act extortion, the Government had to prove, beyond a reasonable doubt, the existence of a quid pro quo agreement—that the defendant received, or intended to receive, something of value in exchange for an official act.”); *United States v. Blagojevich*, 794 F.3d 729, 737 (7th Cir. 2015).

⁸⁹ *Evans*, 504 U.S. at 268; *Silver*, 864 F.3d at 111 n.24; *United States v. McDonough*, 727 F.3d 143, 155 (1st Cir. 2013); *United States v. Thompson*, 647 F.3d 180, 187 (5th Cir. 2011).

⁹⁰ *Buffis*, 867 F.3d at 235; *United States v. Manzo*, 636 F.3d 56, 65 (3d Cir. 2011) (“Therefore, while the element of coercion is subsumed in the ‘under color of official right’ theory, it is not a separate element that the government must prove.”).

⁹¹ *Evans*, 504 U.S. at 267-68; *Buffis*, 867 F.3d at 235; *United States v. Fountain*, 792 F.3d 310, 318 (3d Cir. 2015); *Kalb*, 750 F.3d at 1004.

⁹² 18 U.S.C. § 201(a)(3) (“[T]he term ‘official act’ means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.”).

agree to do so. That decision or action may include using his official position to exert pressure on another official to perform an “official act,” or to advise another official, knowing or intending that such advice will form the basis for an “official act” by another official. Setting up a meeting, talking to another official, or organizing an event (or agreeing to do so)—without more—does not fit the definition of “official act.”⁹³

Aiding and Abetting, Attempt, and Conspiracy

As is true of Hobbs Act robbery, section 1951 proscribes obstructing commerce by means of extortion, and attempting or conspiring to do so.⁹⁴ Section 2 of the federal criminal code treats those who aid or abet the commission of a felony by another as if they had committed the underlying crime themselves.⁹⁵ Here as elsewhere, “[t]he crime of attempt consists of two elements. First, the government must prove culpable intent. In other words, the defendant must have been acting with the kind of culpability otherwise required for the commission of the crime that he is charged with attempting. The second element is conduct constituting a substantial step toward commission of the crime that strongly corroborates that intent.”⁹⁶ Factual impossibility is not a defense.⁹⁷ Nor is abandonment after a substantial step has been taken.⁹⁸

The crime of conspiring to commit Hobbs Act extortion is a bit of an enigma. The word “extortion” connotes a predator and a victim. Yet, a predator and a “victim” may be guilty of conspiracy to commit Hobbs Act extortion under color of official right without the participation of anyone else.⁹⁹ Conspiracy requires that all conspirators embrace a common purpose, the commission of the underlying offense.¹⁰⁰ Hobbs Act extortion requires the victim’s “consent” to the surrender of his property to the extortionist, but “the minimal ‘consent’ required to trigger § 1951 is insufficient to form a conspiratorial agreement.”¹⁰¹ It helps to think of Hobbs Act extortion as akin to bribery. As the Supreme Court explained in *United States v. Ocasio*, “[t]he ‘consent’ required to pay a bribe does not necessarily create a conspiratorial agreement. In cases where the bribe payor is merely complying with an official demand, the payor lacks the *mens rea* necessary for a conspiracy.”¹⁰² Imagine, for example, “that a health inspector demands a bribe from a restaurant owner, threatening to close down the restaurant if the owner does not pay. If the owner reluctantly pays the bribe in order to keep the business open, the owner has ‘consented’ to

⁹³ 136 S. Ct. 2355, 2371-72 (2016); see also *Silver*, 864 F.3d at 118; *United States v. Repak*, 852 F.3d 230, 253-54 (3d Cir. 2017). At least one commentator has offered an alternative should Congress wish to revisit *McDonnell*. Jennifer Ahearn, *A Way Forward for Congress on Bribery After McDonnell*, 121 PENN ST. L. REV. 4 (2017).

⁹⁴ 18 U.S.C. § 1951(a).

⁹⁵ 18 U.S.C. § 2(a); e.g., *United States v. Reagan*, 725 F.3d 471, 485-86 (5th Cir. 2013).

⁹⁶ *United States v. Ward*, 914 F.2d 1340, 1345 (9th Cir. 1990); see also *United States v. Salahuddin*, 765 F.3d 329, 349 (3d Cir. 2014); *United States v. Vigil*, 523 F.3d 1258, 1267 (10th Cir. 2008).

⁹⁷ *United States v. Temkin*, 797 F.3d 682, 690 (9th Cir. 2015); *United States v. Manzo*, 636 F.3d 56, 66 (3d Cir. 2011).

⁹⁸ *Temkin*, 797 F.3d at 690.

⁹⁹ *Ocasio v. United States*, 136 S. Ct. 1423, 1429 (2016) (“[U]nder longstanding principles of conspiracy law, a defendant may be convicted of conspiring to violate the Hobbs Act based on proof that he entered into a conspiracy that had as its objective the obtaining of property from another conspirator with his consent and under color of official right.”).

¹⁰⁰ *Id.* at 1429 (quoting *Salinas v. United States*, 522 U.S. 52, 65 (1996)) (“[T]he fundamental characteristic of a conspiracy is a joint commitment to an ‘endeavor which, if completed, would satisfy all of the elements of the underlying substantive criminal offense.’”).

¹⁰¹ *Id.* at 1435.

¹⁰² *Id.* (citing inter alia *Salinas*, 522 U.S. at 63-5; *United States v. Bailey*, 444 U.S. 394, 405 (1980)).

the inspector’s demand, but this mere acquiescence in the demand does not form a conspiracy.”¹⁰³ A unity of intent is also a component of aiding or abetting another to commit Hobbs Act extortion, which is complete when someone else commits the underlying offense.¹⁰⁴

Sentencing

Hobbs Act extortion, attempts and conspiracies are all punishable by imprisonment for not more than 20 years. Unlike Hobbs Act robbery,¹⁰⁵ the government appears to have rarely prosecuted Hobbs Act extortion as a crime of violence under 18 U.S.C. § 924(c) (carrying or using a firearm in furtherance of crime of violence). Hobbs Act extortion, however, qualifies as a predicate offense under RICO, the money laundering statutes, and the Travel Act. A RICO violation, for example, occurs whenever an individual conducts the affairs of a commercial enterprise through the patterned commission of a series of predicate offenses such as Hobbs Act extortion.¹⁰⁶ The proceeds from Hobbs Act extortion may constitute an element of promotional money laundering. Proceeds of more than \$10,000 generated by Hobbs Act extortion may supply an element in the offense of monetary transaction money laundering. The Travel Act, among other things, makes it a federal crime to travel interstate, use the mail, or use any facility in interstate commerce to promote or distribute the proceeds of a bribery or extortion offense.¹⁰⁷

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¹⁰³ *Ocasio*, 136 S. Ct. at 1436. Two Justices believed that *Ocasio* is the result of an erroneous precedent. *Id.* at 1437 (Thomas, J., dissenting) (parallel citations omitted) (“In my view, the Court started down the wrong path in *Evans v. United States*, 504 U.S. 255 (1992), which wrongly equated extortion with bribery. In so holding, *Evans* made it seem plausible that an extortionist could conspire with his victim. Rather than embrace that view, I would not extend *Evans* errors further.”); *id.* (Breyer, J., concurring) (“I agree with the sentiment expressed in the dissenting opinion of Justice Thomas that *Evans* ... may be wrongly decided. I think it is an exceptionally difficult question whether ‘extortion’ within the meaning of the Hobbs Act is really ‘the rough equivalent of ... taking a bribe’ ... Nonetheless, we must in this case take *Evans* as good law.”).

¹⁰⁴ *United States v. Cain*, 671 F.3d 271, 303 (2d Cir. 2012); *United States v. Edwards*, 303 F.3d 606, 637 (5th Cir. 2002); *cf.* *Rosemond v. United States*, 572 U.S. 65, 71 (2014) (emphasis added) (quoting *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 181 (1994) (“Under § 2 ‘those who provide knowing aid to persons committing federal crimes, with the intent to facilitate the crime, are themselves committing a crime.’”).

¹⁰⁵ *E.g.*, *United States v. Garcia-Ortiz*, 904 F.3d 102, 105-109 (1st Cir. 2018); *United States v. Davis*, 903 F.3d 483, 485-86 (5th Cir. 2018); *Melgaro-Cabrera*, 892 F.3d 1053, 1060 n.4 (10th Cir. 2018).

¹⁰⁶ 18 U.S.C. §§ 1962(c), 1961(1)(B); *e.g.*, *United States v. Kilpatrick*, 798 F.3d 365, 373 (6th Cir. 2015); *United States v. Fazio*, 770 F.3d 160, 163 (2d Cir. 2014); *United States v. Renzi*, 769 F.3d 731, 736 (9th Cir. 2014).

¹⁰⁷ 18 U.S.C. § 1952; *e.g.*, *United States v. Bencivengo*, 749 F.3d 205, 215 (3d Cir. 2014) (“Indeed, several courts of appeals, including our, have upheld convictions under both the Hobbs Act and Travel Act based on the same conduct.” (citing *United States v. Somers*, 496 F.2d 723 (3d Cir. 1974); *United States v. Bornscheuer*, 563 F.3d 1228 (11th Cir. 2009); *United States v. Millet*, 123 F.3d 268 (5th Cir. 1997); *United States v. Shields*, 999 F.2d 1090 (7th Cir. 1993); *United States v. Hollis*, 725 F.2d 377 (6th Cir. 1984); *United States v. Walsh*, 700 F.2d 846 (2d Cir. 1983); *United States v. Billups*, 692 F.2d 320 (4th Cir. 1982); *United States v. Hathaway*, 534 F.2d 386, 397 (1st Cir. 1976)).