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Ocasio v. United States: Why the Hobbs Act Punishes Co-conspirator Extortion

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OCASIO v. UNITED STATES: WHY THE HOBBS ACT PUNISHES CO-CONSPIRATOR EXTORTION

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State and local corruption is a national problem.[1] Over the past four decades, the United States Department of Justice increased its efforts to combat political corruption by using a variety of statutory tools, the most important of which is the Hobbs Act.[2] Since the passage of the Hobbs Act, the United States Supreme Court has broadened its interpretation of the statute in response to prosecutorial innovation aimed at combatting political corruption.[3] *Ocasio v. United States*[4] presents a case of great importance to the Supreme Court's Hobbs Act jurisprudence.[5] The case concerns defendant Samuel L. Ocasio, a Baltimore police officer convicted of violating the Hobbs Act by engaging in a kickback scheme.[6] The issue currently on appeal before the Supreme Court is whether the Hobbs Act's anti-extortion provision, under which Ocasio was convicted, contemplates acts directed against co-conspirators, or merely third parties outside of criminal conspiracies.[7] The text of the Hobbs Act, its legislative history, and strong public policy considerations all support a broad construction of its anti-extortion provision as encompassing co-conspirator extortion.[8] Therefore, the Supreme Court should affirm the United States Court of Appeals for the Fourth Circuit's decision, uphold Ocasio's conviction, and preserve the Justice Department's ability to fight extortion of co-conspirators with the Hobbs Act.[9]

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1. *Public Corruption: Why It's Our #1 Criminal Priority*, FBI (Mar. 26, 2010), https://www.fbi.gov/news/stories/2010/march/corruption_032610. As Federal Bureau of Investigation Public Corruption/Civil Rights Program Assistant Section Chief Patrick Bohrer explains, public corruption is the agency's primary investigative priority: the agency investigates a gamut of activities including, "extortion, embezzlement, racketeering, kickbacks, and money laundering, as well as wire, mail, bank, and tax fraud." *Id*.
2. 18 U.S.C. § 1951(b)(2) (2012); *see infra* Part II.
3. *See infra* Part II.
4. 750 F.3d 399 (4th Cir. 2014).
5. *See infra* Parts II–IV.
6. *See infra* Part I.
7. *See infra* Part III.
8. *See infra* Part IV.
9. *See infra* Part V.

I. THE CASE

The extensive investigative efforts of the Baltimore Police Department ("BPD") and the Federal Bureau of Investigation ("FBI") resulted in the prosecution of defendant Samuel L. Ocasio in *Ocasio v. United States*.[10] The BPD began its investigation in the summer of 2009, and the FBI joined the investigation in 2010.[11] At the time the FBI became involved, the BPD had identified fifty officers as possibly being involved in a conspiracy to accept payoffs in exchange for referring persons in car wrecks to a local vehicle repair business—Majestic Car Repair LLC ("MCR").[12] Majestic Car Repair LLC was co-owned and operated by brothers Herman Alexis Moreno and Edwin Javier Mejia.[13] During the winter of 2010, the FBI placed a wiretap on Moreno's telephone, and initiated surveillance of MCR and Moreno's private residence.[14] From November 2010 to February 2011, the FBI recorded thousands of phone calls between Moreno and various BPD officers, including Ocasio.[15] The scheme between members of the BPD and MCR consisted of BPD officers referring persons with wrecked vehicles to MCR for repair in exchange for receiving payments from the repair shop ranging from $150 to $350 per vehicle.[16] Knowledge of the "kickback"[17] extortion scheme spread by word-of-mouth throughout the BPD; consequently, the scheme metastasized.[18]

On March 9, 2011, Ocasio and ten co-defendants were indicted in the United States District Court for the District of Maryland on a single count of conspiracy under 18 U.S.C. Section 371,[19] a violation of the Hobbs Act

10. Ocasio v. United States, 750 F.3d 399, 403 (4th Cir. 2014).
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. Kickbacks are defined as follows:

> Probably the most common form of corruption after bribery is the "kickback." Traditionally, a kickback involved an employee receiving a salary, part of which he returned or "kicked back" in cash to his employer . . . . Currently, however, kickbacks most often involve purchase contracts rather than employment contracts, and a kickback could now be defined as an extra charge which a vendor adds to the price of an item sold to a government agency, that the vendor later gives or "kicks" back to the government purchasing agent or other official in his personal capacity, either in cash or in kind.

John R. Hailman, *Corruption in Government Contracts: Bribery, Kickbacks, Bid-Rigging and the Rest*, *in* U.S. DEP'T OF JUSTICE, CRIMINAL DIVISION, PROSECUTION OF PUBLIC CORRUPTION CASES 15, 21 (1988), https://www.ncjrs.gov/pdffiles1/Digitization/110010-110033NCJRS.pdf.

18. *Ocasio*, 750 F.3d at 403.
19. 18 U.S.C. § 371 (2012). Section 371 reads, in pertinent part:

("the Act").[20] On October 19, 2011, the grand jury returned a seven-count superseding indictment charging Ocasio.[21] Count One of the superseding indictment named Ocasio for conspiring to violate the Hobbs Act for engaging in the kickback-for-referral scheme.[22] A jury found Ocasio guilty on all charges against him: conspiring to commit Hobbs Act extortion and three other counts of Hobbs Act extortion.[23] On June 1, 2012, the district court judge sentenced Ocasio to eighteen months in prison, followed by three years of supervised release.

On appeal, the Fourth Circuit addressed whether the Count One conviction was fatally flawed in light of Ocasio's theory that conspiring to extort property from one's own co-conspirator does not contravene federal law.[24] The Fourth Circuit ultimately affirmed the district court, following its precedent in *United States v. Spitler*,[25] in ruling that bribe-payers' active participation in schemes constitute co-conspirator extortion criminalized by the Hobbs Act.[26] The Supreme Court granted certiorari to determine the scope of the Hobbs Act term "another," relative to co-conspirators.[27] In making its decision, the Court will apply fundamental principles of

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> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Id.

20. *Ocasio*, 750 F.3d at 401. The Hobbs Act reads, in pertinent part:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or 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.
>
> (b) As used in this section—
>
> . . . .
>
> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

18 U.S.C. § 1951(a)–(b) (2012).

21. *Ocasio*, 750 F.3d at 402.

22. *Id.*

23. *Id.*

24. *Id.* at 408. The second issue, not on appeal before the Supreme Court, was whether the district court abused its discretion in compelling Ocasio to provide restitution for one of Ocasio's kickback offenses. *Id.* at 412.

25. 800 F.2d 1267 (4th Cir. 1986).

26. *Ocasio*, 750 F.3 at 411.

27. Petition for Writ of Certiorari at i, *Ocasio v. United States*, No. 14-361 (Sept. 25, 2014) [hereinafter Petition].

statutory interpretation in consulting the text of the statute and its legislative history, while also being mindful of the policy implications of its ruling.[28]

II. LEGAL BACKGROUND

The Hobbs Act was originally passed to combat crimes of extortion and robbery committed by labor unions.[29] In drafting the Act, Congress looked to New York law for guidance in defining the crimes of extortion and robbery.[30] Since the Act came into force, the scope of what constitutes extortion has expanded in two significant ways. First, the Act's definition of extortion has been interpreted disjunctively in order to encompass public officials soliciting illicit payments without the threat of violence, force, or fear.[31] Second, judicial construction of the Hobbs Act has also extended so far as to eliminate inducement as an element of extortion—a conspirator now only need receive compensation to be liable for Hobbs Act extortion.[32] There is currently a circuit split stemming from disagreement as to whether the Hobbs Act term "another" contemplates criminal co-conspirators.[33] In resolving this split, the Court will apply conventional methods of statutory interpretation in first consulting the text of the Hobbs Act to derive its plain meaning, and if that analysis does not resolve the case on its own, by examining the Act's legislative history as well.[34]

A. The Legislative History of the Hobbs Act

The framers of the Hobbs Act drafted the statute with the intention of supplanting the Supreme Court's interpretation of the Copeland Anti-Racketeering Act of 1934.[35] The purpose of the Hobbs Act was to combat union violence affecting interstate commerce in the form of extortion and robberies.[36] The framers drafted the Act's language to imitate the definitions of those crimes in New York law, since labor union racketeering was prevalent in New York.[37]

28. *See infra* Part II.D.
29. *See infra* Part II.A.
30. *See infra* Part II.A.
31. *See infra* Part II.B.
32. *See infra* Part II.B.
33. *See infra* Part II.C.
34. *See infra* Part II.D.
35. *See infra* Part II.B.1.
36. *See infra* Part II.B.1.
37. *See* 1942 ATT'Y GEN. ANN. REP. 16–19 (listing several instances of racketeering crimes occurring in New York).

1. The Hobbs Act Supplanted the Supreme Court's Interpretation of the Anti-Racketeering Act

The Department of Justice ("DOJ") originally prosecuted racketeering crimes under the Sherman Anti-Trust Act of 1890.[38] The Copeland Anti-Racketeering Act of 1934[39] ("Anti-Racketeering Act") was implemented to more effectively suppress racketeering.[40] In *United States v. Local 807 of International Brotherhood of Teamsters*,[41] the Supreme Court reviewed a case involving charges levied against Teamsters for violating the Anti-Racketeering Act.[42] Specifically, the Teamsters were charged with conspiring to use and using violence and threats to obtain payments equivalent to union dues from owners of "over-the-road'[43] trucks entering New York City.[44] The Court considered whether members of labor unions could be charged with conspiracy under the Anti-Racketeering Act.[45] The

38. Sherman Anti-Trust Act, ch. 647, 26 Stat. 209 (1890) (codified as amended at 15 U.S.C. §§ 1–7 (2012)); *see also Investigation of So-Called "Rackets": Hearings Before a Subcomm. of the Comm. on Commerce*, 73d Cong. 1 (1933) [hereinafter *Investigation of So-Called "Rackets"*] (statement of Sen. Royal S. Copeland, Chairman, S. Comm. on Commerce) ("The cost of crime is steadily advancing. Conservative students of the subject place the levy at varying amounts, even as high as 13 billions of dollars annually.").

39. Copeland Anti-Racketeering Act, ch. 569, § 2, 48 Stat. 979–80 (1934) (originally proposed as S. 2248, 73d Cong. (1934)).

40. *See Investigation of So Called "Rackets," supra* note 38, at 17 (statement of James S. Bolan, Comm'r of New York) ("The records show that the police have been unable to apprehend in most cases those involved in rackets, because the trouble is in getting them speedily convicted, and after they are convicted to be certain that they receive swift and sure punishment and that they will remain in prison after they get there.").

41. 315 U.S. 521 (1942).

42. Copeland Anti-Racketeering Act, § 2. The Act provides, in pertinent part:

> Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—
>
> (a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or
>
> (b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or
>
> (c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or
>
> (d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both.

Id.

43. The term encompasses trucks "of, for, or pertaining to transportation on public highways." *Over-the-road*, DICTIONARY.COM, http://dictionary.reference.com/browse/over-the-road?s=t (last visited Mar. 11, 2016).

44. *Local 807*, 315 U.S. at 526.

45. *Id.* at 527–28.

Court concluded that the Act did not encompass members of labor unions.[46] Congress reacted to the Supreme Court's decision by attempting, but failing, to pass legislation to amend the Anti-Racketeering Act in 1942 and 1943.[47] Congress finally succeeded, in passing the Hobbs Act in 1945, out of a desire to supplant the Supreme Court's ruling in *Local 807* and to combat the extortive activities of all persons, including members of labor unions.[48]

2. Hobbs Act Terms Imitate Analog Terms in New York Laws

The crimes of robbery and extortion, as defined in the Hobbs Act, were specifically drafted to imitate the definitions for those crimes articulated in New York Penal Code of 1909 ("Penal Code").[49] The Penal Code defined "extortion" as "the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right."[50] The Penal Code defined "robbery" as:

> the unlawful taking of personal property, from the person or in the presence of another, against his will, by means of force, or violence, or fear of injury, immediate or future, to his person or property, or the person or property of a relative or member of his family, or of any one in his company at the time of the robbery.[51]

The Penal Code was drafted to imitate the Field Code, a nineteenth-century model code.[52]

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46. *Id.* at 535.

47. S. 2347, 77th Cong. (1942); H.R. 6872, 77th Cong. (1942); H.R. 7067, 77th Cong. (1942); H.R. 653, 78th Cong. (1943).

48. H.R. 32, 79th Cong. (1945); *see also* 91 CONG. REC. 11,900 (1945) (statement of Rep. Hancock) (stating that the Supreme Court's opinion in *Local 807* was "a plain invitation to Congress to enact an amendment such as the Hobbs bill, in which the word 'whoever' would remove all question that Antiracketeering Act personalities are meant to apply to all persons, including union officers or members, if they practice robbery or extortion").

49. *See* 91 CONG. REC. 11,900 (1945) (statement of Rep. Hancock) ("The bill contains definitions of robbery and extortion which follow the definitions contained in the laws of the State of New York. It would change no State statutes, but the Supreme Court decision, if allowed to stand, might affect State courts in construing those laws."); *see also id.* at 11,906 (statement of Rep. Robsion) ("The word 'extortion' as defined in this bill means the obtaining of property from another with his consent but induced by wrongful use of actual or threatened force or violence or fear. The definitions of robbery and extortion set out in this bill are the same definitions set out in the New York State code of laws and are defined in substantially the same way by the laws of every State in the Union."); *id.* at 11,900 (statement of Rep. Hobbs) ("The definitions in this bill are copied from the New York Code substantially.").

50. N.Y. PENAL LAW § 850 (Consol. 1909).

51. *Id.* § 2120.

52. *See* 4 COMM'RS OF THE CODE, THE PENAL CODE OF THE STATE OF NEW YORK § 613 (Lawbook Exchange, Ltd., 1998) (1865) ("Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.").

After the Hobbs Act came into force, several federal courts of appeals recognized that the Act borrowed its definitions of crimes from New York's laws.[53] Furthermore, the Supreme Court noted the link between the definitions of robbery and extortion in New York's laws and in the Act, in *Evans v. United States*[54] and *Scheidler v. National Organization for Women, Inc*.[55]

B. The Expansion of Judicial Construction of Hobbs Act Extortion

Courts have gradually expanded their interpretations of the Hobbs Act's anti-extortion provision over time.[56] For the first few years following the implementation of the Act, conduct amounting to force, violence, or fear was required for an extortion conviction.[57] Federal courts of appeals eliminated this requirement in the 1970s.[58] In the early 1990s, inducement was eliminated as an element of Hobbs Act extortion as well.[59] The Court has only provided a few limiting interpretations on the Hobbs Act during the same timeframe.[60]

1. Prosecution of Hobbs Act Extortion in the Absence of Force, Violence, or Fear

For thirty years following the Hobbs Act's passage, the definition of extortion in Section 1951(b)(2)—"actual or threatened force, violence, or fear, or under color of official right"[61]—was interpreted conjunctively: public officials were not prosecuted when threats of force, violence, or fear were absent.[62] In the 1960s, however, federal prosecutors began attempting to use the Act to convict state officials for soliciting bribes.[63] Courts were initially reluctant to broaden the scope of Hobbs Act extortion to encompass state officials who did not use threats of violence, force, or fear to solicit illicit payments; the courts thought to do so would essentially render the crimes of extortion and bribery indistinguishable.[64]

53. *See, e.g.*, United States v. Aguon, 851 F.3d 1158, 1164 (9th Cir. 1988) (en banc) (same).
54. 504 U.S. 255, 264–65 (1992).
55. 537 U.S. 393, 403 (2003).
56. *See infra* Part II.B.1–2.
57. *See infra* Part II.B.1.
58. *See infra* Part II.B.1.
59. *See infra* Part II.B.1.
60. *See infra* Part II.B.2.
61. 18 U.S.C. § 1951(b)(2) (2012).
62. McCormick v. United States, 500 U.S. 257, 266 n.5 (1991).
63. *See id.* at 277–78 (Scalia, J., concurring) (indicating that courts were not pleased when federal prosecutors began using the Hobbs Act to punish solicitation of bribes by state officials in the 1960s).
64. *Id.*

A significant shift in courts' understanding of the Act occurred in 1972 when, in *United States v. Kenny*,[65] the United States Court of Appeals for the Third Circuit determined that Section 1951(b)(2) should be read disjunctively:[66] Extortion consists of the "actual or threatened force, violence, or fear, *or* under color of official right."[67] The Third Circuit came to this conclusion because it believed that the Act merely "repeats the common law definition of extortion, a crime which could only be committed by a public official, and which did not require proof of threat, fear, or duress."[68]

The United States Court of Appeals for the Seventh Circuit followed in the Third Circuit's footsteps, also favoring a disjunctive reading of Section 1951(b)(2) in *United States v. Braasch*.[69] The Seventh Circuit reasoned that "the Act is to be construed broadly."[70] Subsequently, several federal courts of appeals adopted this line of reasoning, accepting an expansive, disjunctive reading of the Hobbs Act's definition of extortion.[71]

The Supreme Court has also broadened the scope of Hobbs Act extortion further by eliminating the inducement requirement. Until 1992, federal courts of appeals were split as to whether inducement was an element of Hobbs Act extortion. The majority view—the position of eight circuits—was that inducement *was not* an element of Hobbs Act extortion under the color of official right because no such element existed under the common-law definition of extortion.[72] Under this view, the crimes of extortion and bribery overlap.[73] Alternatively, the minority view—that inducement *is* an element of Hobbs Act extortion—was applied by the United States Court of Appeals for the Second Circuit in *United States v.*

65. 462 F.2d 1205 (3d Cir. 1972).

66. *Id.* at 1229.

67. 18 U.S.C. § 1951(b)(2) (2012) (emphasis added).

68. *Kenny*, 462 F.2d at 1229.

69. 505 F.2d 139 (1974).

70. *Id.* at 152 n.8 (citing United States v. Pranno, 385 F.2d 387, 389 (1967)).

71. *E.g.*, United States v. Harding, 563 F.2d 299, 304 (6th Cir. 1977) (adopting a disjunctive reading of Section 1951(b)(2)); United States v. Hall, 536 F.2d 313, 321 (10th Cir. 1976) (same); United States v. Hathaway, 534 F.2d 386, 393 (1st Cir. 1976) (same).

72. United States v. Evans, 910 F.2d 790, 792, 796 (11th Cir. 1990); United States v. Garner, 837 F.2d 1404, 1407, 1423 (7th Cir. 1987); United States v. Spitler, 800 F.2d 1267, 1269, 1274–75 (4th Cir. 1986); United States v. Jannotti, 673 F.2d 578, 580, 594–96 (3d Cir. 1982) (en banc); United States v. French, 628 F.2d 1069, 1070, 1074 (8th Cir. 1980); United States v. Williams, 621 F.2d 123, 123–24 (5th Cir. 1980); United States v. Butler, 618 F.2d 411, 413, 417–20 (6th Cir. 1980); United States v. Hall, 536 F.2d 313, 320–21 (10th Cir. 1976); United States v. Hathaway, 534 F.2d 386, 389–90, 393–95 (1st Cir. 1976).

73. *See Jannotti*, 637 F.2d at 595 ("The Government is merely required to prove that a public official obtained money to which he was not entitled and which he obtained only because of his official position." (quoting United States v. Hedman, 630 F.2d 1184, 1195 (7th Cir. 1980))).

O'Grady,[74] and the United States Court of Appeals for the Ninth Circuit in *United States v. Aguon*.[75]

In *Evans v. United States*, the Supreme Court adopted the majority view that inducement is not an element of extortion committed under the color of official right.[76] The *Evans* Court first supported its conclusion by noting its understanding that at common law, extortion, like bribery, did not involve inducement.[77] The Court added that the Hobbs Act definition of extortion is even broader than it was at common law because it encompasses "conduct by a private individual as well as conduct by a public official."[78] Though the Court found the legislative history of the Hobbs Act to be "sparse and unilluminating,"[79] it nevertheless concluded, in view of the statutory language and legislative history of the Act, that inducement cannot be an element of Section 1951(b)(2) extortion.[80]

2. Limitations on Judicial Construction of the Hobbs Act

Despite the broad language of Section 1951(b)(2) of the Hobbs Act, the Supreme Court has applied limitations to the construction of its definition of extortion. One of these limitations is a restrictive reading of the Hobbs Act definition of extortion in regards to campaign contributions to elected officials.[81] In *McCormick v. United States*,[82] the Court held that proof of an explicit quid pro quo arrangement is necessary to uphold an extortion conviction of a public official receiving campaign contributions intended to influence that official.[83]

Additionally, in *Scheilder v. National Organization for Women, Inc.*,[84] the Supreme Court identified another limitation in holding that a defendant must obtain or seek to obtain another's property in order to be liable for Hobbs Act extortion.[85] The case before the Court in *Scheilder* concerned the prosecution of defendants who "shut down" abortion clinics.[86] The prosecution's theory was that the defendants had committed Hobbs Act extortion by threatening respondents in an effort to cause them to forfeit

74. 742 F.2d 682 (2d Cir. 1984).
75. 851 F.3d 1158, 1166 (9th Cir. 1988) (en banc).
76. 504 U.S. 255, 260 (1992).
77. *Id.*
78. *Id.* at 263–64.
79. *Id.* at 264.
80. *Id.* at 268.
81. McCormick v. United States, 500 U.S. 257, 274 (1991).
82. *Id.* at 257.
83. *Id.* at 273
84. 537 U.S. 393 (2003).
85. *Id.* at 410.
86. *Id.* at 398.

their rights to medical services.[87] The Court reasoned that to construe the definition of extortion so broadly as to contemplate the acts of the defendants would render it, and the separate crime of coercion, indistinguishable—a result inconsistent with the legislative history of the Hobbs Act.[88] The Court concluded that because the petitioners did not attempt to take the respondent's property, the charges of conspiring to commit extortion were fundamentally flawed.[89]

C. The Circuit Split Preceding Ocasio v. United States

A circuit split exists between the United States Court of Appeals for the Sixth Circuit and the Fourth Circuit concerning how the word "another" in Section 1951(b)(2) should be construed. In *United States v. Brock*,[90] the Sixth Circuit held that the Hobbs Act term "another" does not encompass co-conspirators.[91] The Fourth Circuit in *United States v. Spitler*, however, held that a defendant can be found guilty of extorting a co-conspirator under the meaning of the term "another" in Section 1951(b)(2).[92]

In *Spitler*, the defendant, Vice President of Transportation, Inspection, Inc., complied with the Chief of the Metals Unit of the Maryland State Highway Administration's extortionate demands to purchase for him semi-automatic rifles, untraceable handguns, and jewelry—both before and after being awarded a federally funded contract.[93] The defendant contended on appeal that he merely acquiesced to the Chief of Metal's demands; therefore, he argued that he was not culpable under Section 1951(b)(2).[94] The Fourth Circuit in *Spitler* disagreed, deciding that the defendant was no mere extortion victim of the public official, but rather was properly convicted as an actively engaged co-conspirator.[95] In so holding, the court reasoned that relevant case law did not demand that it "paint with a broad brush and declare a bright line," the threshold at which a bribe-payer's conduct constitutes conspiracy to commit Hobbs Act extortion.[96] The court simply determined that the defendant bribe-payer could not claim that he was a "mere victim" in the case because the true victims of extortion conspiracies are the government and taxpayers.[97]

87. *Id.* at 400–01.
88. *Id.*
89. *Id.* at 410
90. 501 F.3d 762 (6th Cir. 2007).
91. *Id.* at 771.
92. United States v. Spitler, 800 F.2d 1267, 1279 (4th Cir. 1986).
93. *Id.* at 1269.
94. *Id.* at 1278.
95. *Id.* at 1278–79.
96. *Id.* at 1278.
97. *Id.*

In *United States v. Brock*,[98] the Sixth Circuit held that co-conspirators cannot be convicted of Hobbs Act extortion. In *Brock*, the defendant arranged with the supervisory clerk for the criminal division of the county courthouse to remove scheduled forfeiture dealings in return for cash payments.[99] The Sixth Circuit held in favor of the defendant, reasoning that the Hobbs Act does not punish extortion in the form of private individuals offering bribes to public officials.[100] The court determined that the Hobbs Act term "another" does not contemplate co-conspirators who obtain property and consent from themselves in performing extortive acts.[101] The court reasoned that the rule of lenity—a cannon of textual interpretation that calls for the more lenient of competing interpretations of disputed statutory language to be applied—should apply because it believed the Act's text did not unambiguously support the government's purportedly harsher interpretation.[102] The court also noted that the government's theory of co-conspirator extortion was contrary to federalism: "No one doubts that the States have criminal laws prohibiting their citizens from bribing public officials. Is there any reason to doubt the States' willingness to invoke these laws when their citizens engage in schemes as brazen as this one?"[103]

D. The Supreme Court Will Apply Statutory Interpretation Principles in Ocasio v. United States

As articulated by Justice Thomas in *Robinson v. Shell Oil Co.*, when the Court engages in statutory interpretation, it begins its analysis by assessing the plain and ordinary meaning of disputed statutory language.[104] Justice Marshall articulated this principle in *Gibbons v. Ogden*, in relation to Constitutional interpretation thusly: "the enlightened patriots who framed our constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said."[105] The Court uses dictionaries to discover the plain and ordinary

98. 501 F.3d 762 (6th Cir. 2007).

99. *Id.* at 765.

100. *Id.* at 768.

101. *Id.*

102. *Id.*

103. *Id.* at 769.

104. *See* 519 U.S. 337, 341 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." (citing Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 477 (1992); and then citing McCarthy v. Bronson, 500 U.S. 136, 139 (1991))); *see also* Muscarello v. United States, 524 U.S. 125, 127 (1998) ("We begin with the statute's language."); United States v. Locke, 471 U.S. 84, 93 (1985) (disposing of the case in a manner which observes the rule of thumb that statutory interpretation begins by analyzing the text of the statute in dispute).

105. Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 188 (1824).

meaning of such terms.[106] Relatedly, per the Court's ruling in *Chapman v. United States*, the rule of lenity does not factor into the Court's analysis until *after* the text is examined for its plain meaning, and that plain meaning is determined to be unclear.[107]

A helpful precedent for the Supreme Court's resolution of this circuit split is its history of construing similarly broad language. In *Ali v. Federal Bureau of Prisons*,[108] the Court construed the statutory term "any" very broadly.[109] In *Ali*, the Court was given the task of interpreting Section 2680(c) of the Federal Tort Claims Act ("FTCA").[110] Under Section 2680(c), the FTCA waiver of the sovereign immunity concerning claims arising out of torts committed by federal employees does not apply to "any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer."[111] The petitioner in *Ali* argued that a Bureau of Prisons ("BOP") officer who allegedly lost his property during his detainment was liable under the FTCA because the statutory term "any" only contemplated law enforcement officers acting in an excise or customs capacity, not exclusively acting as corrections officers.[112] The Court disagreed, marshalling its decisions in *Harrison v. PPG Industries*[113] and *United States v. Gonzales*[114] in holding that the word "any," within the statutory scheme, had an expansive meaning that contemplated the BOP officer as being among those persons statutorily shielded from tort liability.[115]

If the Court cannot dispose of a case based on its analysis of disputed statutory text alone, it will examine the legislative history of the statute to clarify its understanding.[116] The fact that the Hobbs Act's language was framed to imitate New York laws is very significant, because both the Field

106. *See, e.g.*, *Muscarello*, 524 U.S. at 128 ("Consider first the word's primary meaning."). The dictionaries cited by the Court should have existed contemporaneous to the time of the statute's enactment, in order to demonstrate the plain meaning of disputed terminology at the time it was drafted. *See* United States v. Rabinowitz, 339 U.S. 56, 70 (1950) (Frankfurter, J., dissenting) ("Words must be read with the gloss of the experience of those who framed them.").

107. 500 U.S. 453, 463 (1991) ("The rule [of lenity] comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers." (quoting Callanan v. United States, 364 U.S. 587, 596 (1961))).

108. 552 U.S. 214 (2008).

109. *Id.* at 218.

110. *Id.*

111. *Id.* (citing 28 U.S.C. § 2680(c)).

112. *Id.* at 218–19.

113. 446 U.S. 578 (1980).

114. 520 U.S. 1 (1997).

115. *Ali*, 552 U.S. at 219–20, 227–28.

116. *See, e.g.*, Muscarello v. United States, 524 U.S. 125, 133 (1998) (examining legislative history underlying the disputed statutory term subsequent to an analysis of the text of the statute).

Code and the Penal Code *punish* extortion of co-conspirators.[117] The consistent usage canon states that "identical words used in different parts of the same act are intended to have the same meaning."[118] The Court specifically countenanced the reasonableness of the notion underlying the consistent usage canon in *Atlantic Cleaners & Dyers, Inc. v. United States*:[119] "Undoubtedly, there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning."[120] The Court's precedent for applying the consistent usage canon will be useful for its construction of the term "another" in light of its New York antecedents because those antecedents contemplate co-conspirator extortion.[121]

III. THE COURT'S REASONING

In *United States v. Ocasio*, the Fourth Circuit held that Ocasio's conspiracy conviction was correct, on the basis that the term "another" in the Hobbs Act contemplates both one whom is both being extorted and one whom is a co-conspirator.[122] The court stated that it would review de novo questions of law, including any issues of statutory interpretation.[123]

Ocasio argued that the Fourth Circuit should apply the reasoning of the Sixth Circuit in *United States v. Brock* to reverse his conviction, on the basis that conspiracy to extort a co-conspirator operating in the same criminal scheme is not contemplated by Section 1951(b)(2).[124] The government's position, conversely, rested on the notion that nothing in the text of the Hobbs Act precludes the term "another" from contemplating criminal co-conspirators. The court dismissed Ocasio's arguments that the "from another" language forecloses his culpability for extorting co-conspirators (Moreno and Mejia).[125] The court noted that nothing in the Hobbs Act compels a restrictive interpretation of the disputed language that would negate Ocasio's conviction.[126] The court also rejected Ocasio's attempt to reduce the *Spitler* rule to absurdity; the Court asserted that the "active participation" standard does not render every victim's consent to a

117. *See infra* Part IV.B.

118. Gustafson v. Alloyd Co., 513 U.S. 561, 570 (1995) (quoting Dep't of Revenue of Or. v. ACF Indus., 510 U.S. 332, 342 (1994)).

119. 286 U.S. 427 (1932).

120. *Id.* at 433 (citing Courtauld v. Legh, [1869] 4 LR Exch. 126, 130–31 (Eng.) (articulating the consistent usage canon)).

121. *See infra* Part IV.B.2.

122. 750 F.3d 399 (2014).

123. *Id.* at 408 (citing United States v. Smith, 451 F.3d 209, 216 (4th Cir. 2006)).

124. *Id.* at 408–09.

125. *Id.* at 411 (citing United States v. Brock, 501 F.3d 762, 767 (6th Cir. 2007)).

126. *Id.*

Hobbs Act conspiracy scheme, "a separately punishable conspiracy in every [Section] 1951(a) case."[127]

In assessing the relevance and reasoning of the *Brock* and *Spitler* decisions, the Fourth Circuit concluded that *Spitler* was the controlling precedent because *Spitler* was decided by a Fourth Circuit panel.[128] As a result, the Fourth Circuit applied the *Spitler* "active participation" standard, concluding that "a person like Moreno or Mejia, who actively participates (rather than merely acquiesces) in a conspiratorial extortion scheme, can be named and prosecuted as a co-conspirator even though he is also a purported victim of the conspiratorial agreement."[129] The court treated the text as being perfectly clear on the scope of liability: nothing in the text raised any possibility in the court's mind that the term "another" could be limited to exclude co-conspirators.[130]

The Fourth Circuit observed the Supreme Court's ruling in *Robinson* in determining that the meaning of the text was clear enough to dispose in the government's favor and uphold Ocasio's conviction.[131] The court also followed the Supreme Court's reasoning in *Chapman* in declining to afford Ocasio relief under the rule of lenity because of the lack of ambiguity in the text of the statute.[132] The issue, currently on appeal before the Supreme Court, is whether under Section 1951(b)(2) extortion can only be perpetrated by third parties outside of a conspiracy, or whether it can also involve co-conspirators.[133]

IV. ANALYSIS

A conspiracy to commit Hobbs Act extortion as defined in Section 1951(b)(2) requires that conspirators agree to obtain property from another party, but that party need not be a third party (that is, someone outside of the conspiracy).[134] The ordinary meaning of the language of the statute compels this conclusion because the word "another" plainly means *anyone*.[135] The legislative history of the Hobbs Act supports this conclusion as well. Both the statements of congressmen supporting the passage of the Act, and the language of New York codes upon which the Act is based, indicate that the word "another" should be broadly

127. *Id.* (quoting Opening Brief for Appellant at 28, *Ocasio*, 750 F.3d 399 (No. 1:11-cr-00122-CCB-13)).

128. *Id.* at 411–12.

129. *Id.* at 410.

130. *Id.* at 411 (citing Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997)).

131. *Id.* at 411–12 (citing Chapman v. United States, 500 U.S. 453, 463 (1991)).

132. *Id.* at 412.

133. Petition, *supra* note 27, at i.

134. *See infra* Part IV.A–C.

135. *See infra* Part IV.A.

construed.[136] Finally, public policy considerations support a broad construction of Section 1951(b)(2) as contemplating co-conspirator extortion, for it would neither burden judicial economy nor encroach on federalism.[137] Instead, it would facilitate prosecution of corrupt public officials, especially corrupt police officers.[138]

A. The Text of the Hobbs Act Contemplates Co-conspirator Extortion

The text of Section 1951(b)(2) does not support Ocasio's assertion that Hobbs Act extortion can only involve third parties outside of a criminal conspiracy. The Court's first step in interpreting Section 1951(b)(2) will be to assess the text of the statute.[139] If the disputed language is unambiguous, the Court's inquiry will cease.[140] The government, in its response to Ocasio's petition for certiorari, argued that, "[t]he statute does not state that the defendant must agree to obtain property from someone outside of the conspiracy."[141] In making this argument, the government essentially invoked the negative implication canon of statutory construction: *expressio unius est exclusio alterius*—the expression of one thing implies the exclusion of others.[142] This proposition is not persuasive because Ocasio could just as easily have invoked the same canon in arguing that, "[t]he statute does not state that the defendant must agree to obtain property from someone *inside* of the conspiracy."[143]

The Court's statutory inquiry, to reiterate, should observe the plain meaning rule by beginning with the text.[144] Here, the ordinary meaning of the term "another" demonstrates that Section 1951(b)(2) is sufficiently broad to contemplate extortion of co-conspirators. Any resource indicating

136. *See infra* Part IV.B.

137. *See infra* Part IV.C.

138. *See infra* Part IV.C.

139. *See supra* note 104 and accompanying text.

140. Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997).

141. Brief for the United States in Opposition at 7, Ocasio v. United States, No. 14-361 (Dec. 29, 2014).

142. *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 107 (2012) ("The doctrine properly applies only when the *unius* (or technically, *unum*, the thing specified) can reasonably be thought to be an expression of *all* that shares in the grant or prohibition involved.").

143. *See id*. at 108 ("Even when an all-inclusive sense seems apparent, one must still identify the scope of the inclusiveness (thereby limiting implied exclusion).").

144. *See* Muscarello v. United States, 524 U.S. 125, 127–32 (1998) (assessing the meaning of the phrase "carries a firearm" in light of its primary dictionary definition, its etymology, its use in literature, its colloquial usage in society, and its use in case law); *compare* WAYNE R. LAFAVE, CRIMINAL LAW § 2.2 (4th ed. 2003) ("This plain meaning rule, it has been noted, 'reaffirms the preeminence of the statute over materials extrinsic to it.'" (quoting R. DICKERSON, THE INTERPRETATION AND APPLICATION OF STATUTES 229 (1975))), *with* SCALIA & GARNER, *supra* note 142, at 69 ("The ordinary meaning rule is the most fundamental semantic rule of interpretation.").

the primary meaning of a disputed term should be roughly concurrent to the time in which the statutory term was drafted in order to fairly communicate its plain and ordinary meaning.[145] The government asserts in Section 1951(b)(2) that, "'[w]hoever' refers to the defendant official and 'property from another' refers to property not belonging to that official."[146] Contemporaneous lexicographical authorities support this conclusion. For example, the word "another" in the 1934 edition of *Merriam Webster's Second International Dictionary* is defined as "indefinitely any one or anything else."[147] The 1933 edition of *Black's Legal Dictionary* merely defined the word "another" as being equivalent to the word "additional."[148] Moreover, neither of the these dictionaries defined extortion in such a manner as to lead one to believe that Hobbs Act extortion only applies to third parties.[149]

Supreme Court precedent governing statutory interpretation of the word "any," a similarly broad modifier to "another," also supports the application of the ordinary-meaning rule, vindicating the government's construction of the Hobbs Act. Especially relevant to the Court's analysis in *Ocasio* is its precedented technique in *Ali* of deriving the plain meaning of the word "any" from Webster's *Third New International Dictionary*, in determining that, "the word 'any' has an expansive meaning, that is, 'one or

145. *See* United States v. Rabinowitz, 339 U.S. 56, 70 (1950) (Frankfurter, J., dissenting) ("Words must be read with the gloss of the experience of those who framed them.").

146. Brief for the United States at 21, Ocasio v. United States, No. 14-361 (July 30, 2015) (citing *Another*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 48 (10th ed. 1993)). The government should not have used the tenth edition of Merriam Webster's Collegiate Dictionary in its brief to define the plain and ordinary meaning of the word "another." The dictionary cited by the government, published in 1993, was not written in a timeframe contemporaneous to the passing of the Hobbs Act, and, therefore, does not demonstrate the plain and ordinary meaning of the word "another" in 1946. The word "another," as defined by a dictionary contemporaneous to the passing of the Hobbs Act, is:

> 1. One more, by way of addition; an additional one, similar in likeness or effect; as, eat *another* piece. 2. Not the same; different;—often used with to, *from*, or now usually, *than*; as try *another* way than that. 3. Any or some other; any one else; some one else; as, "Let *another* man praise thee."

Another, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (4th ed. 1933) (emphasis added).

147. *Another*, WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE (William A. Neilson et al. eds., 2d ed. 1934). This dictionary defines the pronoun "another" as:

> 1. One more; a second or additional one.
>
> 2. Any or some other; any different person: indefinitely any one or thing else; some one or thing else; as of the three routes one is dangerous, *another* crowded;—used also with one in a reciprocal sense (asked the boys one of another, that is, of each other).

Id. (emphasis added).

148. *Another*, BLACK'S LAW DICTIONARY (3d ed. 1933).

149. *Compare Extortion*, WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, *supra* note 147, *with Extortion*, BLACK'S LAW DICTIONARY, *supra* note 148.

some indiscriminately of whatever kind.'"[150] For the purposes of this case, it seems reasonable for the word "another" to be construed in the same fashion that the Court has construed the modifier "any," when contemplating whether the Hobbs Act encompasses co-conspirator extortion.[151] Like the plain meaning of the word "any" in *Ali*, the ordinary meaning of the word "another" here is expansive, and therefore contemplates co-conspirators.[152] The Court here has "no reason to demand that Congress write less economically and more repetitiously,"[153] and, therefore, should be "unpersuaded by petitioner's attempt to create ambiguity where the statute's text and structure suggest none."[154] In view of this analysis, Ocasio's assertion at oral argument that the modifier "any" contemplates co-conspirators, but "another" does not, is fundamentally false.[155] In sum, after considering the plain and ordinary meaning of the word "another" in Section 1951(b)(2), the Court's statutory inquiry should cease.[156]

Two arguments against the government's construction of the text of Section 1951(b)(2) obfuscate the appropriate textual basis for Ocasio's conviction. First, Ocasio's supporters argue that the rule of lenity ought to compel the Court to choose the narrower construction of the term "another."[157] The rule of lenity is "when there are two rational readings of a criminal statute, one harsher than the other, we are to choose the harsher

150. Ali v. Fed. Bureau of Prisons, 552 U.S. 214, 219 (2008) (quoting United States v. Gonzales, 520 U.S. 1, 5 (1997) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 97 (1976))).

151. The words are intuitively similar in breadth on their face, and the conceptual equivalence of these two words is reinforced by the fact that the Field Code of 1865, upon which the Hobbs Act is based, critically used the word "any" in identifying the scope of its extortion statute. *See infra* Part IV.B.2.

152. *Compare supra* notes 146–148 (comparing various dictionaries' definition of the meaning of the word "another"), *with Ali*, 552 U.S. at 219 (invoking precedent utilizing dictionaries to construe the ordinary meaning of a disputed statutory term).

153. *Ali*, 552 U.S. at 221 ("Congress could not have chosen a more all-encompassing phrase than 'any other law enforcement officer' to express its intent.").

154. *Id.* at 227 (indicating that the word "any" has an expansive meaning).

155. *See* Transcript of Oral Argument at 7, Ocasio v. United States, No. 14-361 (Oct. 6, 2015) [hereinafter Transcript] ("Mr. Davis: 'Justice Alito, I think yes, it is. And two distinctions from the Mann Act cases: The first is that the Mann Act used the phrase "any woman," not "another woman." I think that case would have been different if it had used the phrase 'another woman.' Justice Alito: 'Well, "any woman" is broader than "another woman." "Any woman" means any of the 3.5 billion-plus women in the world, and that subsumes "another woman," doesn't it?'").

156. *See* Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997).

157. *See, e.g.*, Brief for Former United States Attorneys as Amici Curiae Supporting Petitioner at 8, Ocasio v. United States, No. 14-361 (June 8, 2015) [hereinafter Amici Curiae Brief] (referencing Scheidler v. National Organization for Women, Inc., 537 U.S. 393, 408–09 (2003), in noting that, "[a]fter all, this Court has expressly extended the 'rule of lenity' to the Hobbs Act").

only when Congress has spoken in clear and definite language."[158] Ocasio confuses the breadth of the term "another" with ambiguity.[159] The fact that the term "another" in Section 1951(b)(2) unambiguously applies to "persons" in general, and not merely third parties outside of a criminal conspiracy, as Ocasio suggests, forecloses any application of the rule of lenity in this instance.[160]

Second, Ocasio argues that the government's construction of the term "another" in Section 1951(b)(2) as contemplating extortion of a co-conspirator is impermissible because such construction blurs the distinction between bribery and extortion.[161] Ocasio's argument is predicated on the false notion that bribery and extortion must be mutually exclusive crimes, when in fact, historically speaking, the crimes of bribery and extortion have always been understood to overlap.[162]

The concept that bribery and extortion crimes are not mutually exclusive is manifest in case law. For example, the court held in *United States v. Kenny* that the crimes of extortion and bribery can overlap, since a person choosing to pay to influence a public official can be influenced by the office of said official.[163] The commonsense notion that bribery and extortion overlap is illustrated in the scenario where a criminal pays a police officer hush money in order to avoid arrest: said police officer commits extortion when electing not to arrest a criminal in return for payment, but

158. McNally v. United States, 483 U.S. 350, 359–60 (1987) (citing United States v. Bass, 404 U.S. 336, 347–48 (1971); then citing United States v. Universal C. I. T. Credit Corp., 344 U.S. 218, 221–22 (1952)).

159. *See* Transcript, *supra* note 155 (recounting Justice Alito's statement: "Well, 'any' woman is broader than 'another woman.' Any woman means any of the 3.5 billion-plus women in the world, and that subsumes 'another woman,' doesn't it?").

160. *See* Callanan v. United States, 364 U.S. 587, 596 (1961) ("The rule [of lenity] comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers."); WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, *supra* note 147, at 902.

161. *See* Petition, *supra* note 27, at 15 ("A related problem is that the government's theory also transforms every act of *receiving* a bribe into a conspiracy."); *see also* Brief for Petitioner at 25, 43–44, Ocasio v. United States, No. 14-361 (June 1, 2015) [hereinafter Brief for Petitioner] (stating that the Fourth Circuit's interpretation transforms every payment of a bribe a conspiracy to commit extortion); Amici Curiae Brief, *supra* note 157, at 9 (same).

162. *See* James Lindgren, *The Elusive Distinction Between Bribery and Extortion: From the Common Law to the Hobbs Act*, 35 UCLA L. REV. 815, 821 (1988) ("Further, most statutes prohibiting official extortion from the First Statute of Westminster (1275), through the 19th-century Field Code punished the mere receipt of a corrupt payment as extortion." (footnotes omitted)).

163. 462 F.2d 1205 (3d Cir. 1972), *cert denied*, 409 U.S. 914 (1972); *see also* James P. Fleissner, *Prosecuting Public Officials Under the Hobbs Act: Inducement as an Element of Extortion Under Color of Official Right*, 52 U. CHI. L. REV. 1066, 1072 (1985) ("The [*Kenny*] holding thus implied that the crimes of extortion and bribery could overlap, since even a person 'voluntarily' paying an official could be influenced by the coercive force of the office.").

the criminal commits bribery in paying money to avoid arrest.[164] Indeed, in *Evans*, the Supreme Court determined that an assertion that a defendant committed bribery is not an appropriate defense to a Hobbs Act extortion allegation, a ruling that disposes of Ocasio's argument.[165]

B. The Legislative History of the Hobbs Act Supports the Government's Construction

Even if the text of the Hobbs Act is not sufficiently clear for the disposition of the case, the legislative history of the Hobbs Act reinforces the textual basis for Ocasio's conviction. The internal legislative history of the Hobbs Act—including the congressional debate over the statute and its antecedents—and the coverage of the Hobbs Act in the media, support this conclusion.[166] Furthermore, the external legislative history of the Hobbs Act, that is, the New York laws upon which the statute is based, also support the government's construction of Section 1951(b)(2).[167]

1. Internal Legislative History Supports the Government's Construction of the Hobbs Act[168]

The initial purpose of the Hobbs Act was to prevent the interference of labor unions with interstate commerce.[169] The House Debates on the Hobbs Act illustrate the intent of Congress.[170] Those debates reveal that the statute was designed to criminalize behavior that the Supreme Court had ruled was not contemplated under the 1934 Anti-Racketeering Act.[171] Indeed, in

164. Behavior constituting bribery is punished by federal extortion statutes such as the Travel Act and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), despite the fact that those statutes afford different penalties for said behavior. 18 U.S.C. §§ 1952, 1962 (2012).

165. *See* Evans v. United States, 504 U.S. 255, 267 n.18 (determining that extortion under color of official right and bribery are not mutually exclusive).

166. *See infra* Part IV.B.1.

167. *See infra* Part IV.B.2.

168. "Internal legislative history" refers to legislative materials related to the Hobbs Act.

169. *See supra* Part II.A.

170. *See* ARMAND J. THIEBLOT, JR. & THOMAS R. HAGGARD, UNION VIOLENCE: THE RECORD AND THE RESPONSE BY COURTS, LEGISLATURES, AND THE NLRB 255 n.47 (1983) ("The debates in the House on H.R. 653 were fairly extensive and are as much a legitimate source of legislative history from which probable legislative intent may be deduced as are the debates on the identical bill in the following session." (citing United States v. Emmons, 410 U.S. 396, 404–05 n.14 (1973))).

171. *See id.* at 257 ("Perhaps the clearest indication of what Congress intended by its repudiation of *Local 807* can be found in the fact that the dissenting opinion of Chief Justice Stone was repeatedly referred to in approving terms."). Though, as introduced in the Senate, the Anti-Racketeering Act did not mention activities of labor unions, it seems evident that the Supreme Court's interpretation of that statute struck against its underlying legislative intent, namely being to punish labor union crime. *See id.* at 245 ("The original federal anti-extortion statute, known as the Anti-Racketeering Act, was one of several bills that came out of the extensive investigations of 'racketeering' conducted in 1933 by the Copeland Committee, a special subcommittee of the

response to the Supreme Court's decision in *Local 807*, the Hobbs Act legislation went through the upper chambers of Congress like a "jet-propelled missile."[172] The public was overwhelmingly in favor of the legislation.[173] Congressional support for the legislation was equally overwhelming.[174] The Act entered into force despite President Truman initially vetoing it.[175]

Statements of Representatives Hancock, Celler, Springer, and Whittington, all supporters of the Hobbs Act, demonstrate that the Act's most vocal supporters intended it to be broadly construed.[176] Though the Act's initial purpose was to fight labor racketeering, the intent of Congress was to codify the common law crime of extortion.[177] Critically, the Hobbs Act was not drafted merely to criminalize the activities of Teamsters that interfered with interstate commerce: the word "whoever" in Section

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Senate Committee on Interstate Commerce. As introduced in the Senate, this bill did not specifically include or exclude the activities of labor unions." (footnotes omitted)); Robert C. Albright, *Part of Case Bill Back at White House: Senate Passes Hobbs "Racke" Measure, Vetoed as Rider, Without Debate*, WASH. POST, June 22, 1946, at A1.

172. William Knighton, Jr., *Senate Passes Hobbs Measure Unanimously, Action Is Unexpected*, BALT. SUN, June 22, 1946, at A1.

173. *See At Long Last, the Hobbs Bill Becomes the Law of the Land*, BALT. SUN, July 5, 1946, at A14 ("There was no doubt that the general sentiment of the public was in its favor.").

174. *See* C. P. Ives, *A Clinical Chronology of the Hobbs Bill*, BALT. SUN, July 1, 1946, at A10 ("Now try a little arithmetic. If all the Hobbs-bill votes on the four occasions when in one form or another the bill was before the House are totaled, the result is 1,019 votes in favor to 446 votes in opposition. The Senate voted on the Hobbs bill in one form or another three times, with a total of 142 votes in favor to 84 against. Adding the House and Senate tallies, we get 1,161 votes in favor of the Hobbs bill in one form or another to 530 votes against.").

175. THIEBLOT & HAGGARD, *supra* note 170, at n.48. As Thieblot and Haggard noted:

> After passing the House in independent form, 91 CONG. REC. 11,922 (1945), the substance of the Hobbs Act was also incorporated into the Case Bill, H.R. 4908, 79th Cong., 2d Sess. (1945), which passed Congress but which was vetoed by President Truman, 92 CONG. REC. 674 (1946). Immediately after the veto, the Senate took up and passed the Hobbs Act as previously approved in independent form by the House, 92 CONG. REC. 7308 (1946), thus making tit law in spite of the veto.

Id. (citing John A. Carver, Jr., Comment, *Labor Law—A New Federal Antiracketeering Law*, 35 GEO. L.J. 362 (1947); then citing Logan D. Howell, Comment, *The Hobbs Act—An Amendment to the Federal Anti-Racketeering Act*, 25 N.C. L. REV. 58 (1946)).

176. *See infra* notes 178–181.

177. As one United States Attorney explains:

> No debate centered on official corruption, since the concern of the Congress at the time of passage was labor racketeering. Nevertheless, Congress adopted language contained in the New York Code in defining extortion. Included within that definition was the obtaining of property "under color of official right." The Hobbs Act as enacted thus codified the English common law crime of extortion, an offense that could be committed only by public officials, and that consisted of the taking of property by such an official which was not due him or his office. Unlike the other activity prohibited by the Hobbs Act, which generally fell within the common law prohibitions against blackmail or assault, extortion by public officials was a misdemeanor at common law.

Lee J. Radek, *Hobbs Act*, *in* PROSECUTION OF PUBLIC CORRUPTION CASES, *supra* note 17, app. F at 413, 415.

1951(b)(2), according to Representative Hancock, was intended to "remove all question that Antiracketeering Act penalties are meant to apply to *all persons*, *including* union officers or members, if they practice robbery or extortion."[178] Representative Celler indicated that the Hobbs Act was intended to apply to *any* citizen committing acts of extortion or robbery.[179] Indeed, Representative Springer's rejoinder to the vociferous criticism of the Act by pro-labor congressmen was that the proposed legislation was so sweeping that it did not target labor in particular.[180] In sum, Ocasio's claim that the Hobbs Act does not punish extortion of a co-conspirator cannot be sustained—the statute was intended to punish extortion and robbery, in Representative Whittington's words, "no matter by whom committed."[181]

2. External Legislative History Supports the Government's Construction[182]

The Hobbs Act was drafted to imitate the New York Penal Code of 1909 ("Penal Code"), and the Penal Code's predecessor, the Field Code of 1865.[183] Ocasio admits that the Hobbs Act was framed to imitate these New York laws,[184] but is wrong to nevertheless assert that there is no evidence suggesting that Congress intended the Hobbs Act to grant federal prosecutors' the authority approved by the Fourth Circuit decision in *Spitler*.[185] An analysis of both New York codes supports the government's construction of Section 1951(b)(2) as embracing extortion of a co-conspirator.[186]

Analysis of the Penal Code supports the notion that a conspirator can extort their co-conspirator under the Hobbs Act. Section 850 of Penal Code Article 80 (titled "Extortion and Threats") defines extortion generally as

178. 91 CONG. REC. 11,900 (1945) (statement of Rep. Hancock) (emphasis added). It is not inappropriate in this instance to use news coverage to illustrate the purpose of the Hobbs Act. Representative Hancock himself cited news coverage of the Hobbs Act legislation in articulating the purpose of Congress, through the Hobbs Act, to supplant the decision of the Supreme Court in *Local 807*. *Id.*

179. *See id.* at 11,909 (statement of Rep. Celler) ("This act is intended to apply only to a citizen who is guilty of robbery or extortion.").

180. *See id.* at 11,911 (statement of Rep. Springer) ("I state that there is nothing in this legislation which relates to labor. Labor is not mentioned in the bill. It applies to every American citizen.").

181. *See id.* at 11,913 (statement of Rep. Whittington) ("It punishes extortion and robbery no matter by whom committed.").

182. "External" refers to the New York laws the Hobbs Act was framed to imitate.

183. *See supra* notes 49–52 and accompanying text (providing the New York Penal Code and Field Code that guided the framing of the Hobbs Act).

184. Brief for Petitioner, *supra* note 161, at 40–41 (quoting Sekhar v. United States, 133 S. Ct. 2721, 2724 (2013)).

185. *Id.* at 40–41, 42.

186. *Compare* N.Y. PENAL LAW §§ 850–59, 2120–28 (Consol. 1909) (defining offenses), *with* 4 COMM'RS OF THE CODE, *supra* note 52, at §§ 613–19 (same).

"the obtaining property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right."[187] The definition of "extortion committed under color of official right" in Section 854,[188] and the definition of "a person acting under threats" in Section 859[189]—both stated under Article 80—also use the critical term "another."

Per the Court's paradigm for statutory interpretation set out in *Robinson*, it can look to the usage of the term "another" in the greater statutory context of Article 80 to understand its meaning.[190] In applying this canon, Section 859 of the Penal Code is instructive towards unpacking the meaning of the word "another" as it applies to extortion. Critically, Section 859 employs the word "another" to refer to a person within a criminal conspiracy.[191] The clause, "by threats of another person engaged in that act or omission," specifically links the word "another" to the conspiracy of "two or more persons" involved in the commission of a crime.[192] Therefore, the presumption of consistent usage of the term "another" in Article 80 of the Penal Code compels the conclusion that the term "another" contemplates extortion as being a crime that can be committed by *any person*—including a co-conspirator—engaged in an act or omission constituting extortion.[193] Absent any evidence to the contrary, it logically follows that the drafters of the Hobbs Act adopted this construction of the word "another" in modeling the language of Hobbs Act on the Penal Code of 1909.[194]

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187. N.Y. PENAL LAW § 850.

188. *Id.* § 854. Section 854 of the Penal Code provides:

> A public officer, or a person pretending to be such, who, unlawfully and maliciously, under pretense or color of official authority:
>
> 1. Arrests another, or detains him against his will; or,
>
> 2. Seizes or levies upon another's property; or,
>
> 3. Dispossesses another of any lands or tenements; or,
>
> 4. Does any other act, whereby another person is injured in his person, property, or rights,
>
> 5. Commits oppression and is guilty of a misdemeanor.

Id.

189. *Id.* § 859. Section 859 of the Penal Code provides:

> Where a crime is committed or participated in by two or more persons, and is committed, aided, or participated in by any one of them, only because, during the time of its commission, he is compelled to do, or to aid or participate in the act, by threats of another person engaged in that act or omission, and reasonable apprehension on his part of instant death or grievous bodily harm, in case he refuses, the threats and apprehension constitute duress, and excuse him.

Id.

190. *See supra* note 104.

191. N. Y. PENAL LAW § 859.

192. *Id.*

193. *See id.* (using the term "another" in a manner inclusive of behavior, either action or omission, that equates to extortion).

194. *See id*. (defining the term "another" as inclusive of intra-conspiratorial extortion).

A similar analysis of the model Field Code of 1865 leads to the same result.[195] The word "another," as used in the Field Code, was meant to apply broadly to "every person" who engaged in extortionate behavior, not merely extortionate behavior directed towards third parties.[196] The broad scope of the Field Code bolsters the consistent usage canon analysis of the Penal Code, which supports the government's construction of Section 1951(b)(2) in this case.[197]

C. Public Policy Benefits from the Government's Construction of the Hobbs Act

The Hobbs Act may be the most important instrument for prosecuting extortion in federal law.[198] Other laws punishing extortion do not possess the slight burden of proof the Hobbs Act requires relative to the strength of the punishment it imposes.[199] For example, the Travel Act punishes distribution of illicitly obtained proceeds of illegal activities affecting

195. *Compare id.* ("Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right."), *with* 4 COMM'RS OF THE CODE, *supra* note 52, § 613 ("Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right."). The commission that developed the Field Code was appointed in 1847. John L. McClellan, *Codification, Reform, and Revision: The Challenge of a Modern Federal Criminal Code*, 4 DUKE L.J. 663, 671 (1971). In 1850, the commission submitted complete codes of criminal and civil procedure to the New York legislature, though only the latter was adopted. *Id.* In 1857 the New York legislature requested that another commission to develop penal, civil, criminal codes, and codes of criminal and civil procedure. *Id.* The new commission was headed by several experts at bar, including chairman David Dudley Field, Alexander W. Bradford, and William Curtis Noyes. GERHARD O. W. MUELLER, CRIME, LAW, AND THE SCHOLARS: A HISTORY OF SCHOLARSHIP IN AMERICAN CRIMINAL LAW 34 (1969). Upon the commission's submission of its work to the legislature in 1865, only the code of criminal procedure was adopted by New York. *Id.*

196. *See* 4 COMM'RS OF THE CODE, *supra* note 52, at §§ 615–19 (stating, in the following provisions: Section 615: "*Every person* who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force or any threat such as is mentioned in the last section, is punishable by imprisonment in a state prison not exceeding five years." Section 617: "*Every person*, who, by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge or right of action created, is punishable in the same manner as if the actual delivery of such property or payment of the amount of such debt, demand, charge or right of action, were obtained." Section 618: "*Every person* who, with intent to extort any money or other property from another, sends to any person any letter or another writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat, such as specified in section 614, is punishable in the same manner as if such money or property were actually obtained by means of such threat." Section 619: "*Every person* who unsuccessfully attempts by means of any verbal threat, such as is specified in Section 614, to extort money or other property from another, is guilty of a misdemeanor." (emphasis added)).

197. *Compare* N.Y. PENAL LAW §§ 850–59, 2120–28, *and* 4 COMM'RS OF THE CODE, *supra* note 52, §§ 613–19 (broadly criminalizing extortionate behavior of "every person") *with* 18 U.S.C. § 1951(b)(2) (2012) (criminalizing extortion of "another").

198. *See* S. REP. NO. 96-553, at 643 (1980) ("Perhaps the single most important extortion provision in current Federal law is the Hobbs Act, 18 U.S.C. 1951.").

199. 18 U.S.C. §§ 665(a), 872, 874, 875(a), 875(b), 876(b), 877, 878(b), 1952 (2012).

interstate commerce with merely a fine and/or five years or less of jail time.[200] Public policy, therefore, supports a construction of the Act that encompasses co-conspirator extortion because it is an effective anti-corruption measure, especially in regards to police corruption.[201]

1. An Expansive Interpretation of the Hobbs Acts Combats Corruption

An expansive interpretation of the Hobbs Act as contemplating co-conspirator extortion within the "under color of public right" clause of Section 1951(b)(2) benefits public policy by helping to combat corruption. The historic tendency of the judiciary to broadly construe the Hobbs Act, emanating from the Supreme Court's decision in *Kenny* is justified, given that public corruption is a national problem.[202] The remarks of the Honorable Arnold I. Burns, Deputy Attorney General of the United States at the New York Winter Conference in 1988 serve to illustrate that reality.[203] Burns noted that while levels of public corruption are difficult to quantify due to the discrete and illicit nature of criminal activity, seventy-five percent of FBI field offices at one point during his tenure reported that they were challenged by an epidemic of public corruption.[204] The Department of Justice, as Burns stated, responded to this problem by making prosecution for political corruption a top departmental priority.[205] Consequently, the DOJ's efforts have met great success—between 1977 and 1986 alone, federal corruption convictions increased fourfold, in large part thanks to the enforcement of the Hobbs Act.[206]

Though the federal government has a variety of statutory weapons to fight corruption,[207] the Hobbs Act is an especially favorable tool given the slight burden of proof it requires (de minimis interference with interstate

200. 18 U.S.C. § 1952.

201. *See infra* note 220 (indicating that criminal convictions of corrupt public officials can be an impetus to reform).

202. *See supra* note 1.

203. *See generally* Arnold I. Burns, Hon. Deputy Att'y General of the United States, Address at the 1988 Winter Conference of New York State District Attorneys Association at the Omni Park Central Hotel (Jan. 21, 1988), https://www.ncjrs.gov/pdffiles1/Digitization/109132NCJRS.pdf (remarking that public corruption is a national problem meriting a federal response).

204. *Id.* at 2 ("However, we do know that in a Department of Justice survey just a few years ago, 75 percent of the FBI's field offices reported state and local public corruption as one of their most serious problems. And we also know that prosecutions at both the federal level and the state and local level are definitely up as our law enforcement agencies are working harder and more effectively to curb this plague of public corruption.").

205. *Id.*

206. *Id.* at 4.

207. Examples include the Travel Act, 18 U.S.C. § 1952 (2012), and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962 (2012).

commerce)[208] and the severity of the penalty (a twenty-year maximum sentence)[209] contained within it.[210] Litigation concerning this "under color of official right" clause has expanded in large measure because of its superiority as a tool for attacking state and local corruption.[211] Successful corruption prosecutions under the "color of official right" clause of Section 1951(b)(2) have not varied substantially by jurisdiction.[212] A construction of Section 1951(b)(2) as encompassing co-conspirator extortion advances the ability of the DOJ to effectively apply its most potent statutory weapon for fighting corruption.[213]

The Hobbs Act, as illustrated in the prosecution of Samuel Ocasio, is an especially helpful tool for prosecuting police corruption. Investigation and prosecution of police corruption by state authorities is problematic because it involves a classic conundrum: *Quis custodiet ipsos custodies*—"who watches the watchmen?"[214] The difficulties associated with state investigation and prosecution of police corruption were summed up by Herbert Beigel as follows: "(1) One cannot effectively investigate himself; (2) Local government officials are themselves paying the police for favors; and (3) The citizenry largely acquiesces in and enjoys the favors and leniency granted by the police who can be bought."[215] Corruption has

208. *See* United States v. Baylor, 517 F.3d 899, 901–03 (6th Cir. 2008) (citing cases).

209. 18 U.S.C. 1951(a) (2012).

210. *See* Radek, *supra* note 177, app. F at 413, 414 ("Despite the fact that the Travel Act (18 U.S.C. § 1952), RICO (18 U.S.C. § 1962), and 18 U.S.C. § 666 provide for more direct Federal jurisdiction over bribery of state and local officials, the most popular statutory tool used by Federal law enforcement for combating state and local corruption continues to be the prohibition against extortion contained in the Hobbs Act. The reasons for this popularity are basic: ease of proof and severity of penalty. These advantages, however, also could foster judicial animosity. For this reason it is important for Department personnel to exercise extreme care in the use of this powerful tool so that its continuing availability is insured.").

211. *See White-Collar Crime: A Survey of Law—Extortion*, 18 AM. CRIM. L. REV. 249, 257, 262 (1980) ("Litigation concerning this segment of the definition of extortion is the most rapidly growing area under the Hobbs Act, because it is an expedient vehicle for federal prosecution of local political corruption. . . . Nonetheless, a recent GAO Report, analyzing convictions of federal, state, and local officials in eight judicial districts in 1977–78, indicates that the Hobbs Act is a far more effective tool in attacking state and local corruption than is the Travel Act.").

212. *See* U.S. DEP'T OF JUSTICE, UNITED STATES ATTORNEYS' MANUAL, CRIMINAL RESOURCE MANUAL § 2404 (1997), http://www.justice.gov/usam/criminal-resource-manual-2404-hobbs-act-under-color-official-right ("This theory of extortion under color of official right has resulted in the successful prosecution of a wide range of officials, including those serving on the federal, state and local levels.").

213. *See id.* (explaining the efficacy of Hobbs Act prosecutions).

214. Herbert Beigel, *Criminal Law: The Investigation and Prosecution of Police Corruption*, 65 J. CRIM. L. & CRIMINOLOGY 135 n.2 (1974) explaining the difficulties of attacking police corruption); David Isenberg, *Quis Custodiet Ipsos Custodies?* HUFFPOST BUS. BLOG (May 31, 2010, 12:25 PM), http://www.huffingtonpost.com/david-isenberg/quis-custodiet-ipsos-cust_b_595304.html.

215. Beigel, *supra* note 214.

afflicted municipal law enforcement from its very inception.[216] A variety of reports—such as that of the Knapp and Mollen Commissions in New York, appointed in April of 1970 and July of 1992 respectively—as well as the Chicago Commission appointed in February of 1997, have indicated that municipal police corruption is an important national issue.[217] The Knapp Commission identified two classes of police corruption: (1) grass-eaters—corrupt police who passively accept gratuities but do not pursue corrupt payments, and (2) meat-eaters—corrupt police who aggressively pursue scenarios they can exploit for financial gain.[218] Importantly, the Mollen Commission found that in New York City, police corruption has gradually worsened over time, with meat-eating displacing grass-eating as the dominant form of police corruption.[219]

Herbert Beigel argues that true police reform can only be accomplished internally.[220] The crux of this argument is the Weberian notion that "culture is destiny,"[221] and, therefore, that the ultimate check against corruption is the zeitgeist of an organization.[222] While this point has merit, the government must necessarily do what it can to cast corruption into the public eye, which may serve as an impetus for political action.[223] As Assistant Attorney General William F. Weld stated:

> Witnesses who do not see bribery or extortion as serious crimes do not want to come forward, do not see the need to testify, and

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216. U.S. GEN. ACCOUNTING OFFICE, GAO/GGD-98-111, LAW ENFORCEMENT: INFORMATION ON DRUG-RELATED POLICE CORRUPTION 6 (1998). The first municipal police department in the United States, the New York Police Department, was plagued by corruption in 1844, the year of its inception. *Id.*

217. *Id.* at 1–6.

218. *Id.* at 6.

219. *Id.* at 8.

220. Beigel, *supra* note 214, at 135–36. Beigel concludes:

> No matter how many individual officers are actually indicted and convicted in any investigation, there will be no appreciable effect on the day-to-day operations and internal disciplinary mechanism of the police department unless efforts are made by those directly in charge of the department to institute major reforms. Consequently, it is difficult to justify a federal investigation of police corruption on the basis that such an investigation will have any long run effect on the quality or integrity of local law enforcement over which the federal government exercises little control.

Id. at 155.

221. *See generally* MAX WEBER, THE PROTESTANT ETHIC AND THE "SPIRIT" OF CAPITALISM (1905), *reprinted in* THE PROTESTANT ETHIC AND THE "SPIRIT" OF CAPITALISM AND OTHER WRITINGS (Peter Baehr & Gordon C. Wells eds. & trans., Penguin Books 2002) (generally advancing the theory that cultural forces drive history and precipitate economic and political change); *see also* ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA (1835), *reprinted in* DEMOCRACY AND AMERICA AND TWO ESSAYS ON AMERICA 23, 58 (Gerald E. Bevan trans., Penguin Books 2003) (same).

222. *See* Burns, *supra* note 203, at 9 (arguing that the real check against public corruption is public outcry).

223. *See* Beigel, *supra* note 214, at 156 (explaining that conviction of corrupt public officials can spur reform).

> will not cooperate in investigations. Prosecutors who are reluctant to challenge the power structure, and judges who let corrupt officials stay on the street, have unwittingly aided and abetted this problem.
>
> . . . .
>
> . . . The most effective thing the Justice Department can do is to bring more corruption cases, cases designed to attack the corrupt power structure wherever it exists and cases which challenge the assumption of any of those on top who may believe they are above the law. It is important that we bring cases that are designed to change public attitudes, cases that make it apparent who has profited at the public's expense.[224]

Federal investigation and prosecution under the Hobbs Act are essential, as they can deliver the political pressure necessary to precipitate internal reforms.[225] The Hobbs Act is an important tool for punishing police corruption in the form of a separate offense or as a predicate offense under a RICO prosecution,[226] especially in cases of co-conspirator extortion involving grass-eating police officers like Samuel Ocasio.[227]

While some may argue that an expansive interpretation of Section 1951(b)(2) would lead to an abuse of prosecutorial discretion, this concern is not well founded. Sufficient internal institutional checks are already in place on prosecutorial power in relation to the use of Section 1951(b)(2).[228] The DOJ recognizes that overzealous application of the Hobbs Act may inspire judicial animosity; therefore, DOJ personnel are encouraged, "to exercise extreme care in the use of this powerful tool so that its continuing availability is insured."[229] To this end, approval of the DOJ Criminal Division is required for arrests and indictments in Hobbs Act cases that do not involve violence or force.[230] Therefore, construction of Section 1951(b)(2) as contemplating co-conspirator extortion does not present the danger of future abuse of prosecutorial discretion.

One may reasonably question whether an expanded reading of the Hobbs Act extortion provision creates redundancy in the law given that

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224. William F. Weld, *Introduction*, *in* PROSECUTION OF PUBLIC CORRUPTION CASES, *supra* note 17, at i, iv.

225. *See* Beigel, *supra* note 214, at 156 ("A police department thoroughly investigated and scandalized by indictments and convictions of its officers for extensive wrongdoing may be forced to revise and update its operations and its relationship with the public.").

226. Edward S. G. Dennis, Jr. & Dennis O. Wilson, *Investigation and Prosecution of Police Corruption Cases*, *in* PROSECUTION OF PUBLIC CORRUPTION CASES, *supra* note 17, at 65, 72.

227. *See id.* ("The Hobbs Act serves as a particularly useful tool in reaching police corruption. It may serve as a predicate offense under a RICO prosecution or it may be charged as a separate offense.").

228. *See infra* note 225.

229. Radek, *supra* note 177, app. F at 413, 415.

230. *Id.* at 421.

there are other statutes that punish crimes contemplated under the Act. Where compound offenses are committed, however, ancillary sentence grading (also known as "piggyback grading") is usually applied.[231] In addition, deterrence and retribution values inhere in the sentence length for a crime because punishment extends in proportion to the magnitude of the offense.[232]

2. Congressional Reform Efforts Evidence the Benefits of an Expansive Interpretation of the Hobbs Act

Congressional efforts to reform federal criminal law also demonstrate that an expansive interpretation of the Hobbs Act as contemplating co-conspirator extortion is justified. In 1966, the National Commission on Reform of Federal Laws, also known as the Brown Commission, set to work on creating a draft criminal code.[233] In 1971, the draft federal code eviscerated the Hobbs Act by treating the crime of extortion under the Hobbs Act as theft.[234] However, after two years of processing the draft federal code, the Senate's final product, S. 1,[235] introduced on January 4, 1973, re-embraced the original language of the Hobbs Act.[236] On March 27, 1973, the DOJ Criminal Code Revision Unit introduced a proposed alteration of its own in S. 1400[237] that critically removed the "under color of

231. Note, *Piggyback Jurisdiction in the Proposed Federal Criminal Code*, 81 YALE L.J. 1209 (1972).

> As the Commission notes, there is substantial precedent for piggyback jurisdiction. The Federal Bank Robbery Act, enacted in 1934, provides for an additional sentence when the offender assaults, kidnaps, or kills someone 'in committing' a bank robbery. . . . Even stronger precedent for the piggyback provision, though not mentioned by the Commission, is § 7 of the Enforcement Act of 1870.

Id. at 1214 (footnotes omitted).

232. McClellan, *supra* note 195, at 696–97. McClellan notes:

> "Piggyback" grading means that crimes against persons and property occurring in the course of another federal offense become federally prosecutable as related offenses. This technique may be illustrated by again noting that under present law, as well as the proposed Code, intimidation of a federal judge is punishable by five [years'] imprisonment. If the intimidation takes the form of murder, prosecution may be had under the proposed Code for the 'murder' as well as the 'intimidation.'

Id.

233. THIEBLOT & HAGGARD, *supra* note 170, at 285.

234. *Id.*

235. S. 1, 93d Cong. (1973).

236. *See* THIEBLOT & HAGGARD, *supra* note 170, at 286. Section 2-9C3 of S. 1 provided: "A person is guilty of extortion if he intentionally obtains services or property of another from another person, with the consent of the other person, where such consent is induced by wrongful use of actual or threatened force, violence or fear, or under color of official right." S. 1, 93d Cong. § 2-9C3 (1973).

237. S. 1400, 93d Cong. (1973).

official right" clause of the Hobbs Act.[238] On May 2, 1977, the Senate introduced S. 1437, which represented a distillation of the three earlier proposals that importantly included the "under color of official right" provision.[239] While S. 1437 failed as its antecedents had, Senator Ted Kennedy attempted to push the Criminal Code Reform Act through by introducing S. 1722[240] in 1979—a bill identical to S. 1437, and S. 1630[241] in 1981—which merely inserted the word "wrongful" into the Hobbs Act.[242] Significantly, in reviewing this history, no proposed congressional revision of federal criminal law ever made any indication that co-conspirator extortion was not contemplated in the original language of the Hobbs Act.

3. An Expansive Construction of the Hobbs Act Does Not Encroach on Federalism

Interpreting Section 1951(b)(2) to encompass co-conspirator extortion does not, as some may fear, encroach on federalism.[243] Federal criminal jurisdiction is utilized for three purposes: (1) to punish criminal matters of exclusive federal concern, (2) to punish criminal matters that state or local authorities are incapable of addressing, and (3) to punish noncompliance with federal administrative regulations.[244] These purposes map onto the "inherent tension between the need to combat official impropriety using the most effective tools available and the importance of maintaining tradition state functions."[245] It is important to remember that the teleological underpinnings of the Hobbs Act lie in a fundamental mistrust of state governments' ability to punish criminal activity contemplated in Section 1951(b)(2) on their own.[246] The address of Representative Joseph R. Eastman to the subcommittee of the House Judiciary Committee on May 1, 1942, in the wake of the Supreme Court's widely bemoaned decision in

238. *Id.* at § 1722(a). Section 1722(a) of S. 1400 provided: "A person is guilty of an offense if he knowingly obtains property of another by force, or by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged." *Id.*; *see also* THIEBLOT & HAGGARD, *supra* note 170, at 286.

239. "The extortion offense, however, was again simply defined as obtaining property of another '(1) by threatening or placing another person in fear that any person will be subjected to bodily injury or kidnapping or that any property will be damaged; or (2) under color of official right.'" THIEBLOT & HAGGARD, *supra* note 170, at 287–88.

240. S. 1722, 96th Cong. (1979).

241. S. 1630, 97th Cong. (1981).

242. *See* THIEBLOT & HAGGARD, *supra* note 170, at 290, 296.

243. *See, e.g.*, Evelle J. Younger, *State v. Uncle Sam*, 58 A.B.A. J. 155, 158 (1972) ("These federal incursions betray a deep distrust of both local law enforcement and of the ability of local prosecutors and courts to handle malfeasance when it occurs.").

244. L. B. Schwartz, *Federal Criminal Jurisdiction and Prosecutors' Discretion*, 13 LAW & CONTEMP. PROBS. 64, 66 (1948).

245. *White-Collar Crime: A Survey of Law—Extortion*, *supra* note 211, at 262.

246. *See infra* note 247.

Local 807, serves to illustrate this point.[247] As Eastman stated: "There would have been no need for this statute if the local authorities could have been depended upon to enforce the law . . . the shameful fact seems to be the local authorities could not be depended upon . . . ."[248] While prosecution of state and local corruption is chiefly the prerogative of state and local authorities, federal prosecution of state and local corruption is needed where state and local authorities are incapable of addressing stark or systemic instances of corruption due their lack of expertise, resources, or because they are corrupt.[249]

4. An Expansive Construction of the Hobbs Act Does Not Constitute Overcriminalization

The Brown Commission's *raison d'être* stemmed from the concern that the federal criminal code contained superfluous or unnecessary statutes.[250] As President Johnson stated in a speech on March 9, 1966: "A number of our criminal laws are obsolete. Many are inconsistent in their efforts to make the penalty fit the crime. Many—which treat essentially the same crimes—are scattered in a crazy-quilt patchwork throughout our criminal code."[251] Today many continue to complain of over-criminalization, as is illustrated by the suggestion of the Honorable Alex Kozinski of the Ninth Circuit, that Congress "[r]epeal three felonies a day for three years."[252]

In response to this concern, it first must be noted that Section 1951(b)(2) does not render prototypical anti-extortion or anti-bribery statutes superfluous. The notion that the Hobbs Act is an indispensable

247. *Some of the Teamsters Take the Hobbs Act a Little Hard*, BALT. SUN, July 6, 1946, at A6.

248. *Id.*

249. *See* Hailman, *supra* note 17, at 17 ("Corruption in state and local government contracts is, generally speaking, the responsibility of local prosecutors. It becomes of Federal concern, however, when it either corrupts local law enforcement or becomes so pervasive that local prosecution can no longer handle it on an individual-case basis. We have seen stark recent examples of such statewide corruption in Oklahoma, New York and Mississippi, among others. The positive side is that Federal intervention in those states seems to have been welcomed by local citizens and, for the most part, has been successful."); *see also* THE KNAPP COMMISSION REPORT ON POLICE CORRUPTION 256 (1972) ("District attorneys working as closely as they do with police officers, also tend to be sympathetic to the police. Cases of outright and provable corruption are customarily pursued with appropriate vigor. However, a district attorney and his assistants, who work daily with police officers, often find it difficult to believe allegations of corruption among policemen who are brother officers of the investigators with whom they work. The close relationship between prosecutors and police also affects public confidence in the district attorneys' willingness to prosecute policemen. Whether or not the district attorneys are in fact reluctant to conduct such prosecutions, large segments of the public believe that they are and this inhibits some people from reporting allegations of police corruption to them.").

250. George W. Liebmann, *Chartering a National Police Force*, 56 A.B.A. J. 1070 (1970).

251. *Id.*

252. Alex Kozinski, *Preface: Criminal Law 2.0*, 44 GEO. L.J. ANN. REV. CRIM. PROC. iii, xliv (2015), http://georgetownlawjournal.org/files/2015/06/Kozinski_Preface.pdf.

anti-corruption tool is expressed in a letter submitted by DOJ Assistant Attorney General Richard Thornburgh to the Chairman of the Subcommittee on Criminal Laws and Procedures, John C. McClellan, on February 19, 1976:

> [C]ontrary to the assumption in the draft Report, the conduct reached by the "under color of official right" offense would not be preserved by the possibility of a prosecution for classic bribery. To establish bribery under section 1351 of S. 1 the prosecution must show that the defendant public servant accepted "anything of value in return for an agreement or understanding that the recipient's official action as a public servant will be influenced thereby, or that the recipient will violate a real duty as public servant." Proving the existence of such a *quid pro quo*, which is the essence of bribery, presents far more difficult problems of proof than to make out the "under color of official right" offense.[253]

Congress's continued support for the "under color of official right" clause of Section 1951(b)(2) throughout its debate for federal criminal law reform demonstrates that the provision is neither superfluous nor a manifestation of over-criminalization, but rather is necessary to fight corruption.[254]

5. A Broad Construction of Section 1951(b)(2) Will Not Impair Judicial Economy

It is evident that construing Section 1951(b)(2) to encompass co-conspirator extortion will not impair judicial economy by significantly burdening the caseload of U.S. district courts. The United States Sentencing Commission report for the Fiscal Year 2004 indicates that only a bare 1% of guideline defendants in the Fourth Circuit were punished for racketeering or extortion related offenses, as compared to 0.9% nationally.[255] The Sentencing Commission's Report for Fiscal Year 2014 indicates that the share of guideline defendants who have committed racketeering or extortion related offenses are similarly low: 2.3% for the Fourth Circuit as compared to 1.1% nationally.[256] Judicial caseload indicators for fiscal year 2014 illustrate an overall decrease of total criminal

253. *Reform of the Federal Criminal Laws: Hearing Before the Subcomm. on Criminal Laws and Procedures of the Comm. on the Judiciary*, 59th Cong. 9240–41 (1977).

254. *See supra* notes 232–241 (illustrating the preservation of Section 1951(b)(2) throughout the Act's consideration for reform by Congress).

255. U.S. SENTENCING COMM'N, STATISTICAL INFORMATION PACKET, FISCAL YEAR 2004, FOURTH CIRCUIT 3 tbl.1 (2004), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2004/4c04.pdf.

256. U.S. SENTENCING COMM'N, STATISTICAL INFORMATION PACKET, FISCAL YEAR 2014, FOURTH CIRCUIT 2 tbl.1 (2014), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2014/4c14.pdf.

cases filed in U.S. district courts from 92,226 in 2005, to 81,226, in 2014 (a decrease of 11.9%).[257] The number of criminal cases filed in U.S. district courts for extortion crimes reflects this overall trend, decreasing from 243 in 1995, to 159 in 2013.[258] Additionally, the number of state and local officials charged by the DOJ's Public Integrity Section over the past two decades was consistently low: the total number of those charged in 1995, as well as in 2014, was approximately 300.[259] In view of these metrics, there is no statistical basis for a claim that interpreting the Hobbs Act's extortion provision as contemplating co-conspirator extortion would increase the marginal number of federal extortion charges per year sufficient to burden the economy of the federal judiciary.

V. CONCLUSION

Ocasio v. United States presents the Supreme Court with an opportunity to reiterate its principles of statutory interpretation and continue the judiciary's pattern of broadly construing the Hobbs Act.[260] In view of the plain and ordinary meaning of the Hobbs Act's language, as well as the Act's legislative history, the Supreme Court should affirm the Fourth Circuit and uphold Ocasio's conviction.[261] Important public policy considerations also militate in favor of a broad construction of the Hobbs Act as punishing co-conspirator extortion.[262] Political corruption, particularly police corruption, has, is, and will continue to be, a provocative flashpoint for public discourse.[263] Section 1951(b)(2) of the Hobbs Act provides the DOJ with a powerful weapon for punishing, and thereby deterring, corruption.[264] A rule of law stemming from this case that gives teeth to the "under color of official right" clause of the Hobbs Act facilitates federal anti-corruption efforts, without unduly burdening judicial economy, or depriving local authorities of their site-based prerogatives.[265]

257. *U.S. District Courts—Judicial Business 2014*, U.S. COURTS, http://www.uscourts.gov/statistics-reports/analysis-reports/judicial-business-united-states-courts (last visited Dec. 16, 2015).

258. *Id.*

259. PUBLIC INTEGRITY SECTION, CRIMINAL DIV., U.S. DEP'T OF JUSTICE, REPORT TO CONGRESS ON THE ACTIVITIES AND OPERATIONS OF THE PUBLIC INTEGRITY SECTION FOR 2014 23 tbl.I (2014), https://www.justice.gov/criminal/file/798261/download.

260. *See supra* Parts III; IV.A–B.

261. *See supra* Part IV.A–B.

262. *See supra* Part IV.C.

263. *See supra* Part IV.C.

264. *See supra* Part IV.C.

265. *See supra* Part IV.C.