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IN THE SUPREME COURT OF THE UNITED STATES

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DAVID ANTHONY TAYLOR, :

Petitioner : No. 14-6166

v. :

UNITED STATES. :

- - - - - x

Washington, D.C.

Tuesday, February 23, 2016

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:05 a.m.

APPEARANCES:

DENNIS E. JONES, ESQ., Abingdon, Va.; on behalf of Petitioner.

ANTHONY A. YANG, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of Respondent.

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P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Case 14-6166, Taylor v. United States.

Mr. Jones.

ORAL ARGUMENT OF DENNIS E. JONES

ON BEHALF OF THE PETITIONER

MR. JONES: Mr. Chief Justice, and may it please the Court:

The Hobbs Act has two elements. The first requires that the accused to obtain property from another by either extortion or robbery. The second is the jurisdictional element, in that the consequence of either the extortion or the robbery creates an interference with commerce.

The effect on commerce is the jurisdictional element of the crime, and like all elements, it must be proven beyond a reasonable doubt through the introduction of particularized evidence necessary to establish this element.

In the case -- in this case the government was not required to prove the effect-on-commerce element, which ultimately resulted in the conviction of Mr. Taylor.

1 JUSTICE GINSBURG: One of the things you say  
2 in your brief is that you were not even given the  
3 opportunity to show that the victims dealt exclusively  
4 in home-grown marijuana.

5 If you -- if you had that opportunity, how  
6 will you have shown that this, the marijuana in  
7 question, was grown in Virginia rather than some other  
8 place, some other State?

9 MR. JONES: Your Honor, they're -- in all  
10 likelihood, I would either call as a witness a retired  
11 DEA agent or an ATF agent or a retired local police  
12 officer who had years of experience in that field  
13 qualifying that person.

14 Virginia is -- is a State, like all the  
15 other States, that has the ability to grow marijuana  
16 in-State. It's been going on for years and years and  
17 years. There's not necessarily -- we -- we cited in our  
18 brief not only the DEA statistics for a time period  
19 that's shown not only the amount of marijuana that was  
20 subject to the eradication plan of DEA in Virginia but  
21 also a couple of local news articles and events where in  
22 Botetourt County, I think the most current one was 2013,  
23 about the time we were before the Fourth Circuit.

24 JUSTICE GINSBURG: And that could show that  
25 it could have been grown, but you could say that for

1 every State in the Union. But you made that -- you said  
2 you wanted to submit proof that the victims dealt  
3 exclusively in home-grown marijuana, and since every  
4 other State also has marijuana dealers, how could you --  
5 how could you show exclusively, that this marijuana came  
6 exclusively?

7 MR. JONES: We're -- for one thing, it could  
8 have cross-examined him on -- on that point. But  
9 pursuant to the motion in limine, I think trial counsel  
10 at that point believed that he -- he was precluded from  
11 even going into that area with -- with the victims.

12 JUSTICE KAGAN: Well, Mr. Jones, suppose you  
13 had been able to show this. Suppose you had been able  
14 to show that it was a dealer who dealt in intrastate  
15 marijuana exclusively. What difference would that have  
16 made under the terms of the Hobbs Act?

17 MR. JONES: Under the -- under the terms of  
18 the Hobbs Act, the government would have borne the proof  
19 of going forward and -- and showing an effect on -- on  
20 interstate commerce with -- with that --

21 JUSTICE KAGAN: Well, you see, that's the  
22 thing. I mean, I don't think that the Hobbs Act  
23 requires the government to show an effect on interstate  
24 commerce. As you said in your opening statement, the  
25 Hobbs Act only requires an effect on commerce, and then

1 commerce is defined: Commerce means all commerce over  
2 which the United States has jurisdiction.

3 Now, for sure the United States has  
4 jurisdiction over interstate commerce, but under Raich  
5 it also has jurisdiction over intrastate drug  
6 trafficking.

7 And so if you just sort of put the pieces of  
8 the statutes together, it seems to make it completely  
9 irrelevant whether the drug trafficking was intrastate  
10 or interstate, because in either case, it was commerce  
11 over which the United States has jurisdiction.

12 MR. JONES: I think the difference  
13 between -- I think what Hobbs addressed -- excuse me --  
14 what Raich addressed was, of course, the Controlled  
15 Substance Act.

16 Controlled Substance Act is -- is a matter  
17 of regulation of -- of interstate commerce and not so  
18 much -- did not address, as a -- as a separate issue,  
19 the effect on -- on commerce.

20 So what the Hobbs Act in our view addresses  
21 is the effect, not so much the regulation.

22 A -- a reading of -- of the Raich case,  
23 the -- the words --

24 JUSTICE KAGAN: But -- but doesn't the  
25 Hobbs -- doesn't Raich say that the government has --

1 the United States has jurisdiction over intrastate drug  
2 trafficking?

3 MR. JONES: It does, Your Honor.

4 JUSTICE KAGAN: So why isn't that enough?  
5 Because this statute, again, does not require that there  
6 be an effect on interstate commerce. It -- it  
7 affects -- it requires that there be an effect on  
8 commerce as defined in the statute. And as defined in  
9 the statute, all it says is that the commerce has to be  
10 one of a kind over which the United States has  
11 jurisdiction. And Raich says the United States has  
12 jurisdiction over even intrastate drug dealing.

13 MR. JONES: Raich does say that, but the  
14 plain language of the Hobbs Act and the -- the essence  
15 of the crime itself is the effect. The word "effect" is  
16 used in the Hobbs Act.

17 And even if -- if you -- by the regulation  
18 of commerce does not in and of itself have an effect on  
19 the commerce.

20 JUSTICE KAGAN: Well --

21 JUSTICE KENNEDY: Well, then you could make  
22 the same argument if it was conceded that these drugs  
23 were an interstate. You say, oh, well, you still have  
24 to show an effect.

25 Is that what you're saying?

1 MR. JONES: Yes, sir.

2 JUSTICE KENNEDY: Based on your answer to  
3 Justice Kagan, doesn't make any difference whether it's  
4 local or interstate.

5 MR. JONES: Well --

6 JUSTICE KENNEDY: There is still a failure  
7 of proof somehow.

8 MR. JONES: There is a failure of proof  
9 here.

10 JUSTICE KENNEDY: That's -- that's very  
11 hard -- that's very hard to comprehend.

12 MR. JONES: Your Honor, there was no proof  
13 here. The -- the only proof that was admitted to record  
14 was -- was through -- through some police officers  
15 who -- who considered to be experts. There was some  
16 questions I think the dialogue --

17 JUSTICE KENNEDY: Do you -- do you think  
18 robbery of an item in interstate commerce has an effect  
19 on that commerce?

20 MR. JONES: Do I think robbery of --

21 JUSTICE KENNEDY: Of goods in interstate  
22 commerce have an effect on interstate commerce? Or does  
23 the government in every case have to show that there is  
24 an effect.

25 MR. JONES: I think if the goods are --



1 JUSTICE KENNEDY: The government in every  
2 case in your submission has to show that if there's a  
3 robbery of goods in interstate commerce, that it has to  
4 put on an economic expert to show that there's an effect  
5 on interstate commerce when there's been a robbery.

6 That's your position?

7 MR. JONES: No, Your Honor. Not --

8 JUSTICE KENNEDY: All right. Well, then how  
9 do you explain your answer that "effect" is the key word  
10 here?

11 MR. JONES: Well --

12 JUSTICE KENNEDY: You just concluded that it  
13 isn't.

14 MR. JONES: In -- in the numerous cases that  
15 have been cited in our -- our brief, as well as the  
16 government's brief, you take for example the Tillery  
17 case that -- that is out of the Fourth Circuit. That  
18 was a -- that was a -- that was a robbery of a dry  
19 cleaner in the Portsmouth/Virginia Beach area of  
20 Virginia. I think it was about \$40 taken in that  
21 robbery if I -- if I recall it correctly.

22 The -- the effect on the commerce was the  
23 ability of -- of that business to purchase its coat  
24 hangers, for example. They came from China. They came  
25 from Mexico. There was also cleaning solvents that --

1 that was purchased and used by that business that was  
2 manufactured and transported from Georgia to Virginia.  
3 The evidence in -- in those cases showed that whatever  
4 the subject or the -- of the commodity that was being  
5 sold or used by that particular enterprise had -- had  
6 traveled in interstate commerce, and in some instances  
7 the individual himself had traveled in interstate  
8 commerce. So you had evidence to that fact.

9 JUSTICE GINSBURG: Suppose -- suppose the  
10 victims of this robbery, the drug dealers, -- suppose  
11 the police had a warrant to go into the house and  
12 they -- there is marijuana there and they take it.  
13 Could the victims -- who were they? They were Worley or  
14 Lynch -- could they be prosecuted or could they not be  
15 prosecuted because the government was unable to show  
16 that the marijuana they possessed came from out of  
17 State?

18 MR. JONES: Could Worley or Lynch have been  
19 prosecuted as a drug dealer?

20 JUSTICE GINSBURG: Yes.

21 MR. JONES: Yes, Your Honor. I think they  
22 could have been.

23 JUSTICE GINSBURG: They could have been,  
24 even though -- even though all of the marijuana came  
25 from Virginia?

1           MR. JONES: I think they could have been  
2 under -- under the Controlled Substance Act under  
3 Title 21.

4           JUSTICE ALITO: Under -- when Congress  
5 enacted the Hobbs Act, did it intend to exercise the  
6 full measure of its authority under the Commerce Clause?

7           MR. JONES: History tells us that it did, I  
8 think, and this Court's precedence tells us that it did.

9           JUSTICE ALITO: All right. Could Congress  
10 enact a statute under -- under Raich, based on the  
11 reasoning of Raich, prohibiting the theft of a  
12 controlled substance just as it has put -- enacted  
13 statutes prohibiting the growing of marijuana or the  
14 production of other controlled substances?

15          MR. JONES: Excuse me. Could it have --

16          JUSTICE ALITO: Could it enact a statute  
17 that makes it a crime to steal a controlled substance,  
18 exercising its Commerce Clause authority under the  
19 reasoning of Raich?

20          MR. JONES: It could have, but with -- from  
21 our view. However, you would still have to show that  
22 effect, that impact, that influence on -- on the  
23 marijuana or drug trafficking.

24          JUSTICE ALITO: On a case-by-case basis.  
25 Then why can it prohibit the growing of marijuana across

1 the board without proving anything about the particular  
2 marijuana in question, but according to you, it cannot  
3 prohibit the sale of -- I'm sorry, the theft of  
4 marijuana?

5 MR. JONES: Well, I -- I think our position  
6 is that it's -- it's the effect, and -- and the -- the  
7 effect can -- can come about in -- in many ways that's  
8 been addressed. You can have a reduction on -- on the  
9 movement of marijuana from one State into your State,  
10 because there's -- there's no need for it, but that  
11 would require evidence as to that effect or that  
12 interference or that -- even the influence on -- on the  
13 commerce piece of it.

14 JUSTICE ALITO: Why is that needed -- why is  
15 that not needed in a situation in which the person is  
16 growing marijuana? For personal use?

17 MR. JONES: From our view, the -- 21 U.S.C.  
18 801 regulates all drugs. And there's a difference in  
19 regulating from our -- in our view, there's a difference  
20 in that regulation component from what the effect on  
21 interstate commerce is, itself. They're standalone  
22 elements, from our view. And since it's a criminal  
23 element that must be proven beyond a reasonable doubt,  
24 if you stop just at the robbery and say that as a result  
25 of the subject of that robbery being a drug dealer in

1 toto, without looking at the specific piece of what the  
2 drug dealer is doing business in, and whether it's  
3 traveled in interstate commerce, or whether it's, for  
4 example, methamphetamine. When you manufacture  
5 methamphetamine, which you clearly -- controlled under  
6 the Controlled Substance Act, those ingredients, Coleman  
7 fuel, lye, phosphorous, they all travel in interstate  
8 commerce. And the fact that they have done that -- been  
9 in -- been in that travel in that commercial lane  
10 triggers the Controlled Substance Act to --

11 JUSTICE KAGAN: Mr. --

12 MR. JONES: -- prohibit.

13 JUSTICE KAGAN: Mr. Jones, I guess I'm  
14 trying to figure out what we're disagreeing about. So  
15 let me give you a proposition, and you tell me whether  
16 you agree with it.

17 The Hobbs Act prohibits robberies that  
18 affect marijuana trafficking, whether the marijuana  
19 trafficking is interstate or intrastate.

20 Do you agree with that?

21 MR. JONES: I disagree with that.

22 JUSTICE KAGAN: But why is that? Because  
23 that's what I was saying at the beginning, that it seems  
24 clear to me that under the terms of the Hobbs Act, the  
25 Hobbs Act does prohibit robberies that affect commerce.

1 Raich says commerce includes both interstate and  
2 intrastate marijuana trafficking. So the Hobbs Act  
3 prohibits robberies that affect marijuana trafficking  
4 generally, whether it's interstate or intrastate.

5 What's there to disagree with in that?

6 MR. JONES: I -- I agree from the standpoint  
7 that the Controlled Substance Act under Raich regulates.  
8 But beyond that point, what the Hobbs -- if Congress had  
9 wanted to use the word "regulate" rather than  
10 "affects" --

11 JUSTICE KAGAN: Well --

12 MR. JONES: -- Congress could very easily  
13 have done that.

14 JUSTICE KAGAN: Well, but I said -- I used  
15 the word "affects." I didn't use the word "regulate."  
16 I said the Hobbs Act prohibits robberies that affect  
17 commerce. Commerce is either interstate marijuana  
18 trafficking or intrastate marijuana trafficking under  
19 the definition in this statute. So you -- the  
20 government has to show that a robbery affected some kind  
21 of marijuana trafficking. It doesn't matter what kind.  
22 Wouldn't you agree with that? I mean, it just seems --

23 MR. JONES: Yeah. I -- I --

24 JUSTICE KAGAN: -- it's the current of the  
25 statute plus Raich.

1                   MR. JONES: Right. It's -- it's the  
2 commodity that's the subject of the robbery that has  
3 to -- has to affect. And if -- if Congress -- if -- if  
4 the Hobbs Act, in the plain language of it -- and I  
5 think we're talking about the very last phrase, commerce  
6 that's regulated by Congress, in -- in that situation,  
7 if the commodity itself is a standalone, if that's the  
8 interpretation of the statute, then commerce is affected  
9 by -- by the taking of -- of the commodity subject just  
10 because it's regulated, nothing more.

11                   JUSTICE KAGAN: Well, I guess this goes back  
12 to Justice Kennedy's question. I mean, seems to me  
13 pretty self-evident that a robbery of a business affects  
14 a business. Wouldn't you think that that's right?

15                   MR. JONES: Yes --

16                   JUSTICE KAGAN: I mean, I don't think that  
17 the word "affects" is doing a whole lot of work here,  
18 because of course a robbery of a business affects a  
19 business, right?

20                   MR. JONES: Yes, ma'am.

21                   JUSTICE KAGAN: Okay. So -- so it's not  
22 really "affects" that's the problem here. The problem  
23 seems to be that you're resisting the notion that the  
24 business could be entirely intrastate.

25                   But what I'm suggesting is that the terms of

1 the Hobbs Act itself, given Raich, make clear that the  
2 business can be intrastate, because the definition of  
3 commerce here doesn't say "interstate commerce." It  
4 says "commerce over which the United States has  
5 jurisdiction." And because of Raich, we know that the  
6 United States has jurisdiction over even intrastate drug  
7 dealing.

8 MR. JONES: Yes, Your Honor. I agree with  
9 that.

10 CHIEF JUSTICE ROBERTS: What -- what is  
11 the -- the standard of proof that you hold Congress to  
12 when it exercises jurisdiction over intrastate  
13 businesses with an effect on interstate commerce or  
14 interstate commerce?

15 Somebody challenges Congress's exercise of  
16 jurisdiction because it doesn't fit within the  
17 interstate commerce or effect on interstate commerce,  
18 and the statute's evaluated according to what standard?

19 MR. JONES: I'm not sure that I understand  
20 the question, Mr. --

21 CHIEF JUSTICE ROBERTS: Well, somebody  
22 says -- you know, challenges -- as we've had challenges,  
23 in cases like Lopez and others -- that, Congress, you  
24 don't have authority to regulate this matter, because it  
25 doesn't involve interstate commerce, doesn't have an



1 effect on interstate commerce, and so on. But how do  
2 we -- how do we evaluate that?

3 Does -- well, does Congress have to prove  
4 beyond a reasonable doubt that the -- there is an effect  
5 on interstate commerce?

6 MR. JONES: In -- in congressional hearings,  
7 the congressional hearings that we have, and the  
8 conclusions that they come to after they go through that  
9 process and there's satisfaction of that, they  
10 promulgate the law.

11 But if they create in -- in the passage  
12 of -- of that acts; for example here, the Hobbs Act is  
13 what we're saying is the -- is the plain reading of it,  
14 is that if -- if in their wisdom the element is to  
15 establish this element, then it becomes an element of  
16 the criminal offense.

17 And it's not so much the element of the  
18 regulation, but it's the element of the criminal  
19 offense. And when you have the element of the criminal  
20 offense, then I fall back, or it's our view that then  
21 the Fifth and Sixth Amendments of the Constitution give  
22 precedent. And if Congress has not provided for that  
23 element in there, then we believe that -- that this  
24 Court is the place to have that addressed.

25 JUSTICE ALITO: I don't think there's any

1 question that this is a jurisdictional element and the  
2 jurisdictional element has to be proven. That's not the  
3 issue.

4           The issue is the meaning of the  
5 jurisdictional element. And if the jurisdictional  
6 element means, as interpreted in Raich, and it's a --  
7 you know, it's a controversial area of constitutional  
8 law, but it's a precedent and you're not challenging  
9 it -- so the jurisdictional element as interpreted in  
10 that case is anything that has an effect on --  
11 anything -- any purely -- any local activity that is of  
12 a type which, if taken in the aggregate, would have a  
13 substantial effect on interstate commerce, that falls  
14 within the Commerce Clause.

15           If the jury is instructed in that way, and  
16 that's basically the way I think it was instructed here,  
17 all they have to find is that there was a theft of --  
18 there was a robbery of drugs, and it had some effect on  
19 the supply of drugs.

20           MR. JONES: In this case I think they were  
21 instructed that our -- our view of that instruction was  
22 that it was a per se or strict liability instruction;  
23 that if -- if -- because in that instruction, it's my  
24 recollection that Judge Conrad said, I tell you that if  
25 this happened, this is satisfied.

1 JUSTICE ALITO: Yeah, well, that's -- that's  
2 the -- that's what Raich -- that's the interpretation of  
3 the Commerce Clause.

4 Do you want the jury to decide what the  
5 Commerce Clause means? It would be an interesting --  
6 under those who -- who think that juries once upon a  
7 time had the authority to decide legal issues. Do you  
8 want them to decide whether the majority or the dissent  
9 was correct in -- in Gonzales?

10 MR. JONES: No, sir, I would not. What I  
11 would -- what I'd like to have an opportunity in -- in  
12 this case was to address what we typically see as facts  
13 that constitute whether you're a drug dealer or whether  
14 you're not. And in this case there wasn't.

15 If you -- if you take -- if you look at the  
16 evidence that was -- that was produced, it's -- it's  
17 been embellished. But -- but the plain reading of the  
18 testimony -- for example, in the Lynch case, there was  
19 no showing that -- that the -- that they had actually  
20 been engaged in a drug dealing enterprise. It was  
21 rumored that a person had been robbed, not Mr. Lynch but  
22 a person had been robbed at some point in time in the  
23 past, I think of 20 pounds of marijuana.

24 In -- in the Worley case it was -- it just  
25 stated you -- you couldn't go anywhere that Mr. Worley

1 had acknowledged selling marijuana one time, about three  
2 or four years prior to this instance. There was simply  
3 no showing in the evidence of this case that you even  
4 had a commercial enterprise going, being conducted at  
5 either one of these residences. It's -- it -- it was an  
6 inference upon an inference.

7 JUSTICE KAGAN: Well, that seems to me a  
8 different kind of argument that you're making now. Now  
9 you're not saying that the question is whether the  
10 marijuana that was being dealt was intrastate or  
11 interstate. Now you're suggesting that what you really  
12 wanted to prove was that this person wasn't a dealer at  
13 all; is that correct?

14 MR. JONES: That's -- that's -- that's --  
15 that's where we got here on this case, was -- was the  
16 absence of particularized evidence as to what was --  
17 what was taking place here. And we weren't able to,  
18 pursuant to the rulings, we simply were not able to  
19 address that.

20 JUSTICE GINSBURG: Wasn't there evidence  
21 that this gang, that they were in -- in the business of  
22 trying to rob drug dealers because they thought they'd  
23 find either the drugs or the money?

24 MR. JONES: Mr. Fitzgerald, who, from the  
25 evidence of this case, I believe to be an organizer or

1 certainly one of the leaders in this -- in this group of  
2 individuals. Our client, Mr. Taylor, he -- he was  
3 added, I believe the evidence shows, for -- for these  
4 two events.

5           And the evidence in that case -- and  
6 judge -- even Judge Conrad, I -- I sense that he became  
7 a little frustrated and he tried to clear it up, because  
8 when you start reviewing the evidence concerning the  
9 Worley robbery -- when you start considering the  
10 evidence concerning the Worley robbery, Mr. Fitzgerald's  
11 testimony is, I don't know what's there. I don't know  
12 what to expect --

13           JUSTICE KENNEDY: I don't -- I don't  
14 understand where we're going here. It seemed to me a  
15 few minutes ago you said, oh, there's no evidence that  
16 he was a drug dealer. But that's not the question  
17 presented. Your question presented assumes that he's a  
18 drug dealer, so don't argue that.

19           MR. JONES: I'm -- I was trying -- I --

20           JUSTICE KENNEDY: So we know that there's a  
21 drug dealer here. We take the case on that basis.

22           MR. JONES: Yes, sir.

23           JUSTICE KENNEDY: All right. So we're  
24 talking about the interstate and local. So it seems to  
25 me that you've -- you just have not raised the point

1 that there was no evidence that he was a drug dealer.

2 MR. JONES: Well, what --

3 JUSTICE KENNEDY: It's not in your petition.

4 MR. JONES: Our -- our point in our petition  
5 was -- is that there was a failure to present  
6 particularized evidence of the impact or the effect  
7 on -- on interstate commerce as a result of the  
8 activities of these people, and we were precluded from  
9 addressing that.

10 The whole theory of the case in -- when it  
11 was presented in the district court, was -- was twofold;  
12 number one, that this interstate -- that the interstate  
13 commerce element had -- had not been met, and that there  
14 was no particularized evidence to show that this  
15 influence or this impact on commerce.

16 May I reserve?

17 CHIEF JUSTICE ROBERTS: Certainly,  
18 Mr. Jones.

19 Mr. Yang.

20 ORAL ARGUMENT OF ANTHONY A. YANG

21 ON BEHALF OF THE RESPONDENT

22 MR. YANG: Mr. Chief Justice, and may it  
23 please the Court:

24 Three characteristics of Petitioner's  
25 robberies underscore that this case falls within

1 Congress's Commerce Clause power.

2           Petitioner's robberies targeted, first, the  
3 inventory in a commodity; two, that inventory belonged  
4 to a commercial participant; and third, it was a  
5 commercial participant in an established interstate  
6 market in marijuana that is a Federally-controlled  
7 substance over which Congress has exercised  
8 jurisdiction.

9           CHIEF JUSTICE ROBERTS: So if it weren't  
10 commercial aspect, then you wouldn't -- you wouldn't --  
11 you would have to demonstrate jurisdiction beyond a  
12 reasonable doubt?

13           MR. YANG: No. I think there -- what --  
14 when you get out of the commercial sphere, the courts of  
15 appeals have drawn a distinction between robberies of  
16 businesses that are engaged in commerce, as the victims  
17 were here, and true individuals who just get robbed.

18           And I think the courts have fairly uniformly  
19 recognized that the -- while the robbery of a business  
20 is kind of economic in nature and more directly  
21 implicates Commerce Clause concerns, when there's a  
22 robbery of an individual, the links are much more  
23 attenuated and there's a longer chain of causation to  
24 get to commerce.

25           And so in those contexts, even within the

1 depletion of assets theory that my brother espouses  
2 before the Court, the courts have said, as a normal  
3 matter, robberies of individuals just don't fall within  
4 the Commerce Clause. But what we have here is the  
5 robbery of marijuana, which we know from Raich, Congress  
6 regulates the trade in marijuana. It's in the marijuana  
7 trade.

8 It's difficult to, I think, come to any  
9 other conclusion, that the robbery of such marijuana  
10 from marijuana dealers engaged in trade over which  
11 commerce has jurisdiction is not a robbery that affects  
12 commerce over which the United States --

13 CHIEF JUSTICE ROBERTS: Well, except that  
14 Congress doesn't have to prove beyond a reasonable doubt  
15 before exercising its jurisdiction that there's an  
16 affect on interstate commerce.

17 MR. YANG: That -- that's what --

18 CHIEF JUSTICE ROBERTS: But if you're  
19 prosecuting somebody, you do have to show beyond a  
20 reasonable doubt that the elements of the crime have  
21 been satisfied.

22 MR. YANG: Well, what you do need to show is  
23 that the robbery affected commerce over which the United  
24 States had jurisdiction. And we know --

25 CHIEF JUSTICE ROBERTS: Beyond a reasonable



1 doubt.

2 MR. YANG: Beyond a reasonable doubt.

3 But we do know that Congress -- that -- from  
4 Raich, that Congress does have jurisdiction over the  
5 entire marijuana trade.

6 Now, the reason Congress has jurisdiction,  
7 as Raich explain -- Raich explained, was it now analyzed  
8 under the rational-basis review that often occurs in  
9 this type of context. But the fact of the matter is, at  
10 the end of the day, there is no doubt, it is a  
11 certainty, that Congress has jurisdiction over the  
12 marijuana trade. And so when you rob --

13 CHIEF JUSTICE ROBERTS: Yes, I -- I suppose  
14 it's a -- maybe an academic question, but your  
15 conclusion that Congress has jurisdiction over the  
16 marijuana trade is based on a different standard of  
17 proof than the criminal one.

18 So yes, you can say of course Congress has  
19 jurisdiction here, but that has been established only  
20 under, I guess, a rational-basis standard. But now you  
21 have to show Congress has jurisdiction pursuant to a  
22 much more daunting standard of proof.

23 MR. YANG: We're not shying away from the  
24 standard of proof. But what -- as we explained, the  
25 question of whether a robbery affects interstate

1 commerce has both legal elements as well as factual  
2 elements.

3 The factual elements, as we explain in our  
4 brief in this case, involve: Did the robbery occur?  
5 Were they robbing and targeting the marijuana of  
6 marijuana dealers?

7 But the legal question -- which judges every  
8 day instruct juries under what the law is, and Gaudin  
9 teaches us that juries must follow those instructions --  
10 the legal conclusion is that the United States has  
11 jurisdiction over the entire marijuana trade.

12 Now, there would be strange anomalies if  
13 juries were allowed to relitigate Raich in every case.  
14 Is there an affect -- you know, does Congress have  
15 jurisdiction over intrastate commerce? Juries would be  
16 coming up with divergent results over the question  
17 whether Congress has jurisdiction over intrastate  
18 marijuana trade, contrary to Congress's own decision in  
19 the decision of this Court.

20 That is a purely legal question. It is --  
21 you can prove beyond a reasonable doubt that Congress  
22 has jurisdiction over the marijuana trade by looking at  
23 Raich. That's a legal question --

24 JUSTICE KENNEDY: So what's -- what's the  
25 instruction that the Court should give to the jury with

1 respect to this jurisdictional element?

2 "Ladies and gentlemen of the jury, you've  
3 heard evidence that there was a robbery of a drug  
4 dealer. I -- you are instructed as a matter of law" --

5 MR. YANG: You are --

6 JUSTICE KENNEDY -- "that" --

7 MR. YANG: -- that the marijuana trade --

8 JUSTICE KENNEDY: -- "that the marijuana  
9 trade is a subject over which the Congress has  
10 jurisdiction and this statute controls"?

11 That's not a very good interpretation.

12 MR. YANG: Well, I think you would -- I  
13 think that -- I think that goes a long way there. I  
14 think the -- the judge would instruct the jury that the  
15 marijuana trade is Congress -- commerce over which the  
16 United States has jurisdiction.

17 JUSTICE KENNEDY: And there's -- there's  
18 nothing for the jury to find on this point?

19 MR. YANG: Not on that point.

20 But the jury must determine that there  
21 was -- the robbery affected jurisdiction, of which --

22 JUSTICE GINSBURG: Was it -- was there a  
23 jury involved in this case, or that -- was this on a  
24 plea?

25 MR. YANG: There was a jury.

1 JUSTICE GINSBURG: There was a jury? So  
2 what -- so we don't have to speculate. What did the  
3 judge charge?

4 MR. YANG: Well, the judge's instructions, I  
5 think, could have been more clear. This case, of  
6 course, is a challenge to the sufficiency of the  
7 evidence, not the jury instructions.

8 JUSTICE GINSBURG: Well, what was the --

9 MR. YANG: But the jury instructions are --  
10 are basically on page 8 of our brief. We've replicated  
11 the most relevant portions of the charge.

12 And, you know, there are the standard  
13 instructions about the government has to show the  
14 jurisdictional element beyond a reasonable -- beyond a  
15 reasonable doubt and establish that the Court defined  
16 "commerce" to mean commerce over which the United States  
17 has jurisdiction, and then said that that could be  
18 satisfied by reducing the -- having a -- showing an  
19 affect, and that affect can be -- you know, I think  
20 there's -- in here is quite -- any kind of affect would  
21 be sufficient. And then there was an explanation that,  
22 you know, the -- the reduction of articles or  
23 commodities in interstate commerce, in this case illegal  
24 drugs and drug proceeds. So --

25 JUSTICE KENNEDY: Well, it -- it seems to me

1 that this instruction is much more defendant-friendly  
2 than the one you indicated that is a minimum. In other  
3 words --

4 MR. YANG: Friendly --

5 JUSTICE KENNEDY: -- I read this -- if -- if  
6 I'm the juror, I read these instructions as saying that  
7 I have to find that this affects interstate commerce.

8 MR. YANG: I think the judge could have  
9 done -- had a much more government-friendly instruction  
10 in this case. And in fact, given Raich, the judge,  
11 as -- as I was just explaining, could have instructed  
12 the jury that the -- all the marijuana trade, that is  
13 both the actual trade within and intrastate trade, is  
14 commerce over which the United States has jurisdiction.

15 JUSTICE KAGAN: But -- but if -- if -- if I  
16 can make sure I understand.

17 The jury is told that you have to find  
18 beyond a reasonable doubt that this defendant affected  
19 commerce over which the United States has jurisdiction.

20 MR. YANG: Correct.

21 JUSTICE KAGAN: Is that right?

22 MR. YANG: That is correct.

23 JUSTICE KAGAN: Does that have --

24 MR. YANG: The jury could --

25 JUSTICE KAGAN: -- to be found beyond a

1 reasonable doubt?

2 MR. YANG: It has to find that jurisdiction  
3 element beyond a reasonable doubt. That has actual --

4 JUSTICE KAGAN: But whether the United  
5 States has jurisdiction over the marijuana trade, be it  
6 inter- or intrastate, has already been decided by Raich.

7 MR. YANG: Correct. I mean, this is no  
8 different than, say, if there's a murder on the special  
9 and maritime jurisdiction of the United States. The  
10 judge will say, what is the special and maritime  
11 jurisdiction of the United States? Will instruct the  
12 jury what that is.

13 The jury then makes the relevant historical  
14 facts to the case, and applies that legal instruction to  
15 the facts in order to find the relevant  
16 jurisdictional --

17 CHIEF JUSTICE ROBERTS: Is --

18 MR. YANG: -- element beyond a reasonable  
19 doubt.

20 CHIEF JUSTICE ROBERTS: Is the defendant  
21 allowed to present any evidence to the contrary?

22 MR. YANG: Well, on our --

23 CHIEF JUSTICE ROBERTS: It would be kind of  
24 silly to say they've got to prove something beyond a  
25 reasonable doubt. All the United States has to do is

1 this, and then -- and the judge instructs the jury that  
2 they've satisfied that burden?

3 MR. YANG: The defendant is entitled to  
4 present evidence that contradict all the relevant facts.

5 But the -- I think what you're asking about  
6 is whether the fact that this particular marijuana might  
7 have been grown in-State -- right? I think that's what  
8 you're saying -- would somehow undermine the  
9 jurisdictional element. And as a matter of law, it does  
10 not.

11 CHIEF JUSTICE ROBERTS: What --

12 JUSTICE KAGAN: Is it --

13 CHIEF JUSTICE ROBERTS: -- in any -- in a  
14 marijuana case, what evidence could a defendant put on  
15 that would prevent the establishment of the  
16 jurisdictional element?

17 MR. YANG: The defendant could show that  
18 there was not an attempt to rob a drug dealer of  
19 marijuana.

20 CHIEF JUSTICE ROBERTS: No. That goes to  
21 the first question of whether there was a robbery: Was  
22 there a robbery? Did it have an affect on -- on  
23 commerce within the jurisdiction of the United States?

24 MR. YANG: Right.

25 CHIEF JUSTICE ROBERTS: Is there any

1 evidence that a defendant could be allowed to introduce  
2 going to the second element?

3 MR. YANG: Well, if they were targeting  
4 marijuana in that robbery, as was the case here, from  
5 marijuana dealers who were trading --

6 JUSTICE KAGAN: But that's the question,  
7 Mr. Yang: From marijuana dealers.

8 I mean, it seems to me the defendant could  
9 say, no. I was targeting a home grower. You know, the  
10 kind of person from Raich. I just -- I was growing this  
11 marijuana for myself. I had no intention of ever  
12 selling it.

13 At that point, you wouldn't be robbing  
14 somebody who was engaged in commerce, right?

15 MR. YANG: Or, I was just robbing a house,  
16 and I happened to stumble upon this.

17 I mean, there are --

18 JUSTICE KAGAN: There are --

19 CHIEF JUSTICE ROBERTS: Yes, but those are  
20 two very different things. Robbing a house and stumbled  
21 upon is one thing, but if you have somebody who is  
22 robbing marijuana that's grown for home consumption or  
23 whatever, can the defendant say the jurisdictional  
24 element is not satisfied because of that?

25 MR. YANG: Well, I think home consumption



1 raises different issues, and I'll -- I'll tell you why.  
2 The Hobbs Act governs robberies that have an affect on  
3 commerce over which the United States has jurisdiction.  
4 There's some question whether just growing marijuana for  
5 your own use by itself is commerce, or whether it's an  
6 activity that affects commerce that would bring it  
7 within --

8 JUSTICE KENNEDY: Let's say --

9 MR. YANG: -- the element of Raich.

10 JUSTICE KENNEDY: Let's -- let's say that  
11 this Court had a decision that home-grown marijuana has  
12 an affect on interstate commerce. Let's say that  
13 that's -- then there's a trial. What instruction --  
14 can -- can any evidence be introduced?

15 MR. YANG: Well, if the Court had said that  
16 just growing marijuana --

17 JUSTICE KENNEDY: Contest commerce part --  
18 part of the indictment?

19 MR. YANG: I -- I think if you're -- if  
20 you're asking whether the Court has decided that growing  
21 marijuana is itself commerce over which the United  
22 States has --

23 JUSTICE KENNEDY: Let's -- let's assume --  
24 let's assume the Court has decided that --

25 MR. YANG: Well, then there -- there's --

1 JUSTICE KENNEDY: -- and then there's a  
2 trial.

3 Is -- is the defendant entitled to introduce  
4 any evidence on that point?

5 MR. YANG: No.

6 JUSTICE KENNEDY: So --

7 MR. YANG: Because that's a legal --

8 JUSTICE KENNEDY: So does the jury have any  
9 discretion to -- to return a verdict of not guilty if it  
10 finds that there was a robbery of a drug dealer -- of --  
11 of -- of drugs that have been home grown?

12 MR. YANG: Under your predicate, no, there  
13 would not. I mean, this is --

14 JUSTICE KENNEDY: What --

15 MR. YANG: This is not new in the law,  
16 right? I mean, juries are instructed on the law. They  
17 determine any of the relevant facts that would be  
18 relevant to the elements of the offense, but they have  
19 to do that within the framework of the law as instructed  
20 by the judge.

21 CHIEF JUSTICE ROBERTS: Well, it may -- that  
22 may be familiar in the law, but I'm not aware of any  
23 case where the burden is on the government to prove  
24 something beyond a reasonable doubt, an element of the  
25 crime, and you're saying there's no way that the

1 defendant -- no evidence that defendant could  
2 introduce -- could rebut the government's showing, in  
3 any case.

4 MR. YANG: I don't --

5 CHIEF JUSTICE ROBERTS: What -- what's your  
6 best authority for that proposition?

7 MR. YANG: I guess it depends on what you  
8 consider to be the element of the offense and how you  
9 define it as a legal matter.

10 What we're -- what we're saying is the jury  
11 does have to find beyond a reasonable doubt that the  
12 jurisdictional element was met. But just as if  
13 Congress, for instance, as it -- as it could, could  
14 directly prohibit -- if Congress directly prohibited  
15 robberies of marijuana from marijuana dealers,  
16 Statute 18 U.S.C. 10,000-something, that prohibits that,  
17 and it says the jurisdictional element of this case is  
18 that the robbery -- is that the robbery has to target  
19 marijuana of a marijuana dealer, the jury would be  
20 deciding precisely that.

21 And here, what we have is the same type of  
22 thing through the Hobbs Act, which I believe my brother  
23 has admitted both at, I think it's page 18 of his brief  
24 and at oral argument, extends to the full extent of the  
25 Commerce Clause. The whole purpose of enacting a

1 "affects commerce" provision is so you don't go through  
2 and have Congress -- the burden of it, you know, then  
3 drug dealers and we have to do, you know, robberies of  
4 this business and that. Congress exercised the full  
5 scope of its power. And so --

6 JUSTICE GINSBURG: Does the government have  
7 to prove anything in this case different from what it  
8 would have to prove if this was a charge of robbery  
9 under State law?

10 MR. YANG: Well, yes. I mean, a robbery  
11 under State law wouldn't be relevant, at least under our  
12 theory of the jurisdictional -- it doesn't matter  
13 whether it's marijuana or whatever. It would just be a  
14 robbery of an individual within the definition of  
15 robbery. But here, in order to -- the additional proof  
16 which is relevant to the jurisdictional element is that  
17 the robbery targeted the marijuana of marijuana dealers.  
18 And by the nature of the targeting of a commodity, the  
19 inventory of a commercial entity engaged in an  
20 interstate business that Congress regulates, as this  
21 Court --

22 JUSTICE GINSBURG: Still, it's very odd that  
23 this is a Federal case. I mean, they -- in fact, they  
24 took, what, a couple of cell phones, \$40?

25 MR. YANG: What you're seeing is part of the

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

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

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

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

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

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

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

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

7 JUSTICE KENNEDY: Pardon me?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 MR. YANG: It would be harder.

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

25 MR. YANG: That's correct.

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

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

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

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

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

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



1 a single cigarette, a single marijuana cigarette?

2 MR. YANG: That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

17          JUSTICE KENNEDY: I understand that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 MR. YANG: Uh-huh.

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

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

1 money --

2 JUSTICE SOTOMAYOR: Right.

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

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

11 MR. YANG: Or has the potential to.

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

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

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

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

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

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

17 CHIEF JUSTICE ROBERTS: Thank you, counsel.

18 Mr. Jones, you have five minutes remaining.

19 REBUTTAL ARGUMENT OF DENNIS E. JONES

20 ON BEHALF OF THE PETITIONER

21 MR. JONES: Thank you, Your Honor.

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

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

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

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

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

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

25           The government should have to prove that



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

4 Any questions?

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

7 CHIEF JUSTICE ROBERTS: Thank you, counsel.

8 Case is submitted.

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

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