

OCASIO V. UNITED STATES: THE SCOPE OF A CONSPIRACY TO COMMIT HOBBS ACT EXTORTION

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INTRODUCTION

*Ocasio v. United States*¹ presents the question of whether a conviction under the general federal conspiracy statute² may be based on Hobbs Act extortion³ when a public official defendant has formed an agreement to obtain property from someone within the conspiracy.⁴ The Hobbs Act provides, in pertinent part, that “[w]hoever in any way or degree obstructs, delays, or affects commerce . . . by . . . extortion . . . in furtherance of a plan or purpose to do anything in violation of this section shall be” guilty of an offense against the United States.⁵ The Act defines “extortion” as “the obtaining of property from another, with his consent . . . under color of official right.”⁶

There is currently a circuit split on the question presented in *Ocasio v. United States*.⁷ The Sixth Circuit interpreted the Hobbs Act’s language definition of extortion as the “obtaining of property *from another*”⁸ and concluded that a Hobbs Act conspiracy requires an agreement to obtain

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1. No. 14-361 (U.S. argued Oct. 6, 2015).

2. 18 U.S.C. § 371 (2012) (“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 person 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.”).

3. See *infra* Section II.A.

4. Brief for the United States at i, *United States v. Ocasio*, 135 S. Ct. 1491 (2015) (No. 14-361) [hereinafter Government Brief].

5. 18 U.S.C. § 1951(a) (2012).

6. *Id.* § 1951(b)(2).

7. See *infra* Section II.B (detailing the split between the Fourth and Sixth Circuits).

8. 18 U.S.C. § 1951(b)(2) (emphasis added).

property from someone outside the conspiracy.⁹ The Fourth Circuit disagreed, holding that a Hobbs Act conspiracy does not require an agreement to obtain property from someone outside the conspiracy when the conduct of the co-conspirator providing property to the public official rises to the level of “active solicitation and procurement”¹⁰ instead of just “mere acquiescence.”¹¹

In *Ocasio v. United States*, the Supreme Court will address this circuit split. This commentary details the relevant facts and procedural history of the case, the legal background of the Hobbs Act, and how courts have treated general federal conspiracies to commit Hobbs Act extortion. It then lays out the arguments presented by both *Ocasio* and the U.S. government. After analyzing these arguments in light of the governing law, it concludes that the Court should affirm the Fourth Circuit’s holding and allow that a conviction under the general federal conspiracy statute be based on Hobbs Act extortion when the property is obtained from someone within the conspiracy. This holding is consistent with the text of the Hobbs Act and prevents adverse policy consequences by denying an exemption for broader conspiracies.

I. FACTUAL AND PROCEDURAL BACKGROUND

The prosecutions underlying this case were the result of a nearly two-year investigation by the Baltimore Police Department (“BPD”) and the Federal Bureau of Investigation.¹² The investigation uncovered a wide-ranging “kickback” scheme involving the Majestic Auto Repair Shop LLC (“Majestic”) and over fifty BPD officers.¹³ Under the scheme, BPD officers would refer automobile accident victims to Majestic for automobile repair work.¹⁴ In exchange for each referral, the officers would receive a monetary payment from Herman Moreno and Edwin Mejia (the co-owners and operators of Majestic) ranging from \$150 to \$300 per vehicle.¹⁵ After the kickback scheme began in either late 2008 or early 2009, knowledge of it spread throughout the BPD by word of mouth.¹⁶

9. *United States v. Brock*, 501 F.3d 762, 767 (6th Cir. 2007).

10. *United States v. Spittler*, 800 F.2d 1267, 1277 n.6 (4th Cir. 1986).

11. *Id.* at 1276.

12. *United States v. Ocasio*, 750 F.3d 399, 403 (4th Cir. 2014).

13. *Id.* at 401, 403.

14. *Id.* at 403.

15. *Id.*

16. *Id.* at 403–04.

Petitioner Samuel Ocasio, an officer for the BPD, first became involved in the conspiracy around May 2009.¹⁷ From May 2009 until 2011, Ocasio referred numerous vehicles to Majestic and received a cash payment of \$300 on each occasion.¹⁸ Consistent with Moreno's instructions, Ocasio would call Moreno from the scenes of automobile accidents and describe the damaged vehicles.¹⁹ If Moreno decided he wanted the vehicle, Ocasio would convince the driver to use Majestic's services and arrange for the wrecked vehicle to be towed to Majestic.²⁰ On one occasion, in January 2010, Ocasio went as far as convincing a driver to cancel a AAA request that the driver had already made and have the car towed to Majestic instead.²¹ On another occasion, Ocasio misrepresented the condition of a 2006 Toyota to its owner after it had been hit by another car while parked, advising the owner to have the car towed to Majestic even though it was in an operable condition.²²

Ocasio also used Majestic's services for his personal needs.²³ In 2010, Ocasio's wife was involved in a traffic accident that caused damage to the rear bumper that was likely too minor to be covered by Ocasio's insurance company.²⁴ Ocasio had the car towed to Majestic, overstated the SUV's damage on an insurance claim form, and had Moreno cause additional damage to the SUV consistent with the damage description reported by Ocasio.²⁵ In addition to the standard cash referral fee, Majestic paid the additional fees not covered by Ocasio's insurance company.²⁶ Moreno admitted at trial that he did this in an effort to foster good will with Ocasio, hoping to ensure Ocasio would continue making referrals.²⁷

In March of 2011, Ocasio, Moreno, Mejia, and eight BPD officers were indicted in the Federal District Court of Maryland in connection with the kickback scheme.²⁸ The initial indictment alleged, pursuant to 18 U.S.C. § 371,²⁹ that the defendants "conspired to violate the Hobbs Act . . . by

17. *Id.* at 404.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* at 405.

23. *Id.* at 406.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 401–02.

29. 18 U.S.C. § 371 (2012).

agreeing to ‘unlawfully obtain under color of official right, money and other property’ from Moreno, Mejia and Majestic.”³⁰ The conspiracy offense in the initial indictment was dismissed as to ten of the eleven co-defendants in exchange for guilty pleas.³¹ Moreno and Mejia each pleaded guilty to Hobbs Act extortion and conspiracy.³² In October of 2011, a seven-count superseding indictment was returned by the grand jury charging Ocasio and Kevin Manrich, another BPD officer.³³ The superseding indictment repeated the 18 U.S.C. § 371 charge of conspiring to violate the Hobbs Act and charged both with Hobbs Act extortion of Moreno.³⁴

At trial, Ocasio relied on the Sixth Circuit’s decision in *United States v. Brock* and argued that he could not be convicted of conspiring with Moreno and Mejia because they were the victims of the alleged Hobbs Act extortion conspiracy.³⁵ The district court rejected this argument, concluding that the Fourth Circuit’s decision in *United States v. Spitler* controlled.³⁶ The jury found Ocasio guilty of all charges against him, and the district court sentenced Ocasio to eighteen months in prison.³⁷ The court also ordered Ocasio to make restitution to the BPD for the aggregate value of the cash payments he received from Majestic and to pay back \$1,870 to the insurance company for the at-fault driver involved in the accident with his wife.³⁸

On appeal, the Fourth Circuit agreed with the district court that *Spitler* controlled.³⁹ The Fourth Circuit upheld the district court’s ruling in part but reversed the district court’s order for restitution payments to the insurance company.⁴⁰ The court held that Moreno and Mejia could be named and prosecuted as co-conspirators, even though they were the purported victims of the conspiratorial agreement, because they actively participated in the conspiratorial scheme.⁴¹ The court declined to adopt the Sixth Circuit’s

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

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *See id.* at 407.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 410.

40. *Id.* at 412 (quoting *United States v. Blake*, 81 F.3d 498, 506 (4th Cir. 1996)).

41. *See id.*

interpretation of the Hobbs Act, instead holding that the “from another” requirement⁴² does not necessarily refer to a person or entity outside of the conspiratorial scheme.⁴³

II. LEGAL BACKGROUND

A. *The Hobbs Act*

The Hobbs Act was passed in 1948 as an amendment to the 1934 Anti-Racketeering Act.⁴⁴ The amendment was a direct response to the Supreme Court’s decision in *United States v. Local 807 of International Brotherhood of Teamsters*, a decision that many in Congress believed was inconsistent with the intended purpose of the Anti-Racketeering Act.⁴⁵ The Hobbs Act punishes by fine or imprisonment anyone:

who[] 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 to conspire to do so, 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.⁴⁶

The Hobbs Act defines extortion as “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.”⁴⁷

B. *The Circuit Split*

The Fourth Circuit decided *United States v. Spitler* in 1985.⁴⁸ Spitler was an employee of a state contractor and gave his associates permission to accede to the demands of a state highway official for firearms, jewelry, and other valuable items in exchange for the approval of inflated invoices.⁴⁹ For

42. See 18 U.S.C. § 1951(b)(2) (2012).

43. See *Ocasio*, 750 F.3d at 411.

44. See Matthew T. Grady, *Extortion May No Longer Mean Extortion After Scheidler v. National Organization for Women, Inc.*, 81 N.D. L. REV. 33, 37 (2005) (citing 91 CONG. REC. 11,911 (1945) (statement of Rep. Jennings) (“Congress altered the 1934 Anti-Racketeering Act to strengthen and clarify its provisions in response to the decision by the United States Supreme Court in *United States v. Local 807 International Brotherhood of Teamsters*.”)).

45. See *id.*; see also *United States v. Local 807 of Int’l Bhd. of Teamsters*, 315 U.S. 521 (1942) (finding no liability for various New York City union members for extorting property from out-of-state truck drivers because there was an exception in the 1934 Anti-Racketeering Act that created an exemption when the money was paid as part of a valid employment arrangement).

46. 18 U.S.C. § 1951(a) (2012).

47. *Id.* § 1951(b)(2).

48. See *United States v. Spitler*, 800 F.2d 1267 (4th Cir. 1986).

49. See *United States v. Ocasio*, 750 F.3d 399, 409 (4th Cir. 2014) (citing *Spitler*, 800 F.2d at

this, Spitler was convicted under the Hobbs Act of conspiracy with a state highway official to extort money and property from his employer.⁵⁰ The Fourth Circuit held that, as a matter of law, a person could be convicted as a conspirator under the Hobbs Act even when he or she is purportedly the victim of the public official's extortion.⁵¹ The court reasoned that Spitler did not "mere[ly] acquiesce[]" in the scheme but, instead, found that Spitler's conduct constituted a "far more active role" as Spitler had "induced, procured, caused, and aided" the public official's ongoing extortion.⁵² The court found there was enough on the record to determine that Spitler's conduct rose above mere acquiescence but found it unnecessary to fashion a bright-line rule.⁵³

The Sixth Circuit decided *United States v. Brock* in 2007.⁵⁴ Brock operated a bail bond business with his brother and conducted a scheme with a county clerk over several years.⁵⁵ Under the scheme, Brock would pay the clerk to alter the bond schedule by removing scheduled forfeiture hearings when one of Brock's clients skipped town.⁵⁶ Despite the fact that Brock initiated the scheme with the county clerk, the court held that Brock could not be a co-conspirator because he was the "victim" of the clerk's extortion scheme.⁵⁷ The Sixth Circuit focused its opinion on the text of the Hobbs Act, reasoning that because the text requires that the agreement must be to obtain "property from *another*," the "other" must be someone outside the conspiracy.⁵⁸ The court also noted the text "requires the conspirators to obtain that property with the other's consent," and did not believe it possible for someone to conspire to obtain his or her own consent.⁵⁹ Although the court acknowledged the Fourth Circuit's holding in *Spitler*, the court held that *Spitler* did not control because it did not believe the Fourth Circuit properly considered the "textual anomalies" of the Hobbs Act.⁶⁰

1278–79).

50. *Id.*

51. *Id.* at 409 (citing *Spitler*, 800 F.2d at 1275).

52. *Id.* (citing *Spitler*, 800 F.2d at 1278).

53. *Id.*

54. *See* *United States v. Brock*, 501 F.3d 762 (6th Cir. 2007).

55. *Ocasio*, 750 F.3d at 410 (citing *Brock*, 501 F.3d at 765).

56. *Id.*

57. *Id.*

58. *Ocasio*, 750 F.3d at 410 (citing *Brock*, 501 F.3d at 767).

59. *Id.*

60. *See id.* at 410 (citing *United States v. Brock*, 501 F.3d 762, 769 (6th Cir. 2007)).

In *United States v. Ocasio*, the Fourth Circuit declined to follow the Sixth Circuit's holding in *United States v. Brock*.⁶¹ The court reasoned that the language of the Hobbs Act does not compel the conclusion that a co-conspirator must obtain property from someone outside the conspiracy.⁶² Instead, the Fourth Circuit held that nothing in the text of the Hobbs Act foreclosed the possibility that the person being extorted can also be a co-conspirator of the public official.⁶³ The court held that the Hobbs Act's "from another" requirement provides only that the prosecution must show that the object of the conspiracy was for the conspiring public official to extort property from someone other than him or herself.⁶⁴

III. ARGUMENTS

A. *Arguments for Ocasio*

Ocasio's argument relies heavily on the plain text of the Hobbs Act.⁶⁵ Ocasio reasons that no English speaker would say that one person who has agreed to pay another a bribe "ha[s] agreed to 'obtain property from another with his consent.'"⁶⁶ Ocasio supports this by arguing that the agreement does not involve "another," just the two parties making the transaction, and that nobody could conspire to obtain his or her own consent.⁶⁷ Ocasio argues that reading the "from another" language in § 1951(b)(2) as "provid[ing] only that a public official cannot extort himself,"⁶⁸ is absurd because it is a "metaphysical impossibility" to pay a bribe to oneself with one's own money.⁶⁹

Ocasio further contends that the Fourth Circuit's reading of the Hobbs Act would classify every payment of a bribe as a criminal conspiracy and, in turn, effectively transform the Hobbs Act into a prohibition on paying bribes to public officials.⁷⁰ Ocasio points out that Congress normally chooses to punish bribes directly, citing several federal statutes criminalizing paying bribes, and argues that Congress would have punished

61. *Id.* at 412.

62. *Id.* at 411.

63. *Id.*

64. *Id.*

65. See Petition for Writ of Certiorari at 13, *United States v. Ocasio*, No. 14-361 (Sept. 25, 2015) [hereinafter Petition for Certiorari].

66. *Id.*

67. *Id.* at 14.

68. *Ocasio*, 750 F.3d at 411.

69. See Petition for Certiorari, *supra* note 65, at 14.

70. *Id.* at 14–15 (citing *United States v. Brock*, 501 F.3d 762, 768 (6th Cir. 2007)).

giving bribes directly here if that is what it intended to do.⁷¹

Ocasio characterizes the distinction the Fourth Circuit makes between mere acquiescence and active participation in *Spitler* and *Ocasio* as an ad-hoc standard that borders on being unconstitutionally vague.⁷² Ocasio believes that the standard's vagueness essentially gives triers of fact an implicit license to find a conspiracy whenever they think the payor is generally a wrongdoer and to, alternatively, shield the payor from liability when they think he is not.⁷³

B. Arguments for the Government

The government maintains that the Fourth Circuit correctly held the Hobbs Act's use of "from another" refers to property belonging to anyone other than the official.⁷⁴ The government argues that Ocasio's textual argument is based on the mistaken assumption that all conspirators must agree to commit every element of the crime.⁷⁵ The general federal conspiracy statute⁷⁶ covers "two or more people who join forces to obtain an objective that the law forbids, [when] 'one or more of [them] do any act to effect the object of the conspiracy.'"⁷⁷ The government contends that, because all participants agreed that police officers would perform official acts in order to obtain property from someone other than a public official, it did not matter that each member of the conspiracy did not satisfy each element of the substantive offense.⁷⁸ Instead, the government argues that all that was required was an agreement with an unlawful purpose and an overt act in furtherance of the agreement.⁷⁹

71. *Id.* at 15.

72. *Id.* at 15–17.

73. *Id.* at 17.

74. See Government Brief, *supra* note 4, at 21 (citing MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 48 (10th ed. 1993) (defining "another" to mean, *inter alia*, "different or distinct from the one first considered"))).

75. See Government Brief, *supra* note 4, at 11 (quoting *Salinas v. United States*, 522 U.S. 52, 63 (1997) ("A conspirator [need] not agree to commit or facilitate each and every part of the substantive offense.")).

76. 18 U.S.C. § 371 (2012).

77. Government Brief, *supra* note 4, at 15 (citing 18 U.S.C. § 371 (2012)).

78. See Government Brief, *supra* note 4, at 12, 15.

79. See *id.* at 15–20 (arguing that the first element, the agreement, was satisfied by Ocasio's agreement with Baltimore Police Department officers and with Moreno and Mejia to create and continue the kickback scheme, and noting that the second element, an overt act, is not seriously disputed as Ocasio, Moreno, and Mejia took a number of steps to effectuate the object of the agreement). The government further argues that Ocasio's interpretation of the Hobbs Act could not be correct because it would allow a narrower conspiracy involving fewer participants to receive criminal

The government rejects Ocasio's claim that its reading of the Hobbs Act would encompass every act of a public official receiving a bribe.⁸⁰ The government believes Ocasio is misguided because the text's use of "consent" in the context of extortion simply means that property changed hands under conditions that do not amount to robbery, a lower bar than a conspiratorial agreement.⁸¹

Additionally, the government responds to Ocasio's refutation of the Fourth Circuit's "active participation"⁸² requirement by emphasizing its deep roots in the Supreme Court's conspiracy case law.⁸³ The government notes that, for decades, lower courts have permitted bribe-payors to face accomplice liability under Hobbs Act extortion for actively participating in bribery schemes.⁸⁴ The government subsequently concludes that the distinction between mere acquiescence and active participation could not be too vague or unworkable because triers of fact have been applying it for decades and Ocasio presents no evidence that juries or judges have struggled to apply it.⁸⁵

IV. ANALYSIS AND LIKELY DISPOSITION

Ocasio v. United States turns on whether the Court believes the text of the Hobbs Act, specifically its use of the "from another" language, prohibits a trier of fact from finding a federal conspiracy to commit Hobbs Act extortion when the property is obtained from someone within the conspiracy.⁸⁶ The Court should: (1) affirm the Fourth Circuit's holding and rule that a conspiracy to commit Hobbs Act extortion does not require that the property be obtained from someone outside of the conspiracy, and (2) provide guidance on the distinction between "mere acquiescence" and "active participation" in the context of Hobbs Act extortion.

punishment while exempting a broader one involving more participants. *See id.* at 12.

80. *See id.* at 32.

81. *See id.* at 31–32 (arguing that, where the payor is simply complying with an official demand, no conspiracy can occur).

82. *See* Petition for Certiorari, *supra* note 65, at 15–17.

83. *See id.* at 33–39; *see also id.* at 34 (citing *Gebardi v. United States*, 287 U.S. 112 (1932) (holding that, in order for a conspiracy to exist, a person's role in a crime must be more active than mere agreement)).

84. *Id.* at 36–37.

85. *Id.* at 37–38. The government also discusses the Court's recent decision in *Johnson v. United States*, which "found no reason to 'doubt the constitutionality of laws that call for the application of a qualitative standard to real-world conduct.'" *Id.* at 38 (citing *Johnson v. United States*, 135 S. Ct. 2551 (2015)).

86. *See supra* Part II (providing the legal background of the question presented).

The Court should begin its analysis by looking at 18 U.S.C. § 371 and its general conspiracy jurisprudence. To prove a federal criminal conspiracy, the prosecution must prove the existence of four elements beyond a reasonable doubt: an agreement to commit an unlawful act, an illegal goal, knowing participation, and an overt act to further the conspiracy.⁸⁷ The text does not require that every member of a conspiracy commit the underlying offenses, but only that “one or more of such persons do any act to effect the object of the conspiracy.”⁸⁸ Here, there was an agreement that Moreno and Mejia would pay BPD officers for referrals as part of the scheme.⁸⁹ Moreno, Mejia, Ocasio and other BPD officers participated with knowledge that the agreement existed, and all relevant parties made overt acts to further the scheme.⁹⁰ Ocasio satisfied the necessary test to prove a federal criminal conspiracy by agreeing to receive and by actually receiving money from Moreno. Ocasio does not contest that he committed the substantive Hobbs Act offense by receiving money from Moreno.⁹¹ Thus, he is essentially arguing that, by participating in the scheme, Moreno can no longer count as “another” under the Hobbs Act. This interpretation is inconsistent with general conspiracy principles, which do not require every member of a conspiratorial agreement to commit each element of the substantive offense. Thus, the Fourth Circuit was correct in its holding that the Hobbs Act’s use of “from another” in its definition of extortion only refers to someone other than the public official.⁹²

Additionally, there are policy implications that weigh heavily against Ocasio’s arguments. The rationale often given to justify the existence of federal criminal conspiracy law is the widely held belief that joint criminal action is more dangerous, and thus poses a greater threat to society, than individual criminal action.⁹³ As the government argues in its brief,⁹⁴ to accept Ocasio’s interpretation of the rule is to create a shield for broader conspiracies while still criminalizing conspiracies of the same sort with

87. Jesse Winograd, *Federal Criminal Conspiracy*, 41 AM. CRIM. L. REV. 611, 614 (2004).

88. *See id.* at 611 n.1 (citing 18 U.S.C. § 371 (2012)).

89. *See supra* Part I (providing factual background underlying charges against Ocasio).

90. *See id.*

91. *See generally* Petition for Certiorari, *supra* note 65. Notably, Ocasio does not seek to overturn the trier of fact’s fact-finding, but instead is appealing the controlling legal standard.

92. *See* United States v. Ocasio, 750 F.3d 399, 411 (4th Cir. 2014).

93. *See, e.g.*, Paul Marcus, *Criminal Conspiracy Law: Time to Turn Back from an Ever Expanding, Ever More Troubling Area*, 1 WM. & MARY BILL RTS. J. 1, 3–4 (1992) (noting that this rationale has been fully accepted on many occasions by judges, including the Supreme Court, and practicing lawyers throughout the United States).

94. *See* Government Brief, *supra* note 4, at 12.

narrower scopes of involvement. If the government had been unable to prove Moreno and Mejia were involved in the agreement, the government would still have had enough evidence to prove a general conspiracy to commit Hobbs Act extortion. Ocasio should not be able to escape liability simply because the government was able to prove that the conspiratorial scheme was even broader, involving Moreno and Mejia. This interpretation is inconsistent with the rationale behind federal criminal conspiracy law, a body of law premised on the belief that joint criminal action poses a greater societal threat than individual criminal action.⁹⁵ Accepting this holding would incentivize public officials conspiring to commit Hobbs Act extortion to broaden the conspiratorial agreement and solicit participation in the scheme from the people they are obtaining property from in an effort to shield themselves from liability. A holding that incentivizes the participation of more actors in a criminal scheme is inconsistent with federal conspiracy law.

Although the Court should side with the government and affirm the Fourth Circuit's holding, Ocasio raises a strong argument about the vagueness of the "mere participation" versus "active participation" distinction in the context of Hobbs Act extortion.⁹⁶ However, this distinction has been used in the Court's conspiracy jurisprudence for years.⁹⁷ But in the context of a conspiracy to commit Hobbs Act extortion, the application of this standard may leave room for unnecessary judicial activism or at least the appearance of judicial activism. For example, looking to this set of facts, it is hard to imagine how any involvement by Moreno and Mejia could have been classified as simply "mere acquiescence." Even if the BPD officers had been the ones who solicited the scheme, Majestic's agreement to pay \$300 for the illegal referrals could be characterized as either active participation or mere acquiescence. Although the potential benefits of a standard that affords a trier of fact some degree of flexibility are clear, a standard that allows for too much flexibility may threaten to undermine the credibility and perceived legitimacy of the common law process.⁹⁸ Even if the trier of fact believes it is arriving at a conclusion through a decision-making process bound by a stringent legal standard, without transparency the appearance of judicial

95. See Marcus, *supra* note 93, at 3–4.

96. See Petition for Certiorari, *supra* note 65, at 15–17.

97. See, e.g., *Gebardi v. United States*, 287 U.S. 112 (1932).

98. Barbara K. Bucholtz, *The Interpretive Project and the Problem of Legitimacy*, 11 TEX. WESLEYAN L. REV. 377, 381 (2005).

activism can have the same adverse consequences. In the interest of judicial administration, the Court should provide some guidance on the distinction between “active participation” and “mere acquiescence” in the context of Hobbs Act extortion to avoid unnecessarily creating a license for judicial activism or the appearance of judicial activism.

CONCLUSION

In *Ocasio v. United States*, the Court will address a split between the Fourth and Sixth Circuits on the scope of a conspiracy to commit Hobbs Act extortion. The Court should hold for the government and affirm the Fourth Circuit’s holding. The government’s arguments are most consistent with the text of the Hobbs Act and adopting the government’s position would prevent adverse policy consequences that would deny protection for broader conspiracies.