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DISTORTING EXTORTION: HOW BRIBERY AND EXTORTION BECAME ONE AND THE SAME UNDER THE HOBBS ACT

*Sigourney Haylock**

I. INTRODUCTION

In *Ocasio v. United States*,[1] the Supreme Court grappled with the issue of whether a public official can be found guilty of conspiring to commit extortion under the Hobbs Act for agreeing to obtain money from his co-conspirators.[2] Perplexingly, the Court held that, indeed, an extortionist is guilty of conspiring to commit Hobbs Act extortion even if the person he extorts is a willing participant in the conspiracy.[3] This Comment argues that *Ocasio* was wrongly decided based on a blurred distinction between bribery and extortion. Sections II and III of this Comment provide background by describing the facts of the case and explaining the Court's reasoning. Section IV puts *Ocasio* in context by discussing the historical framework of the Hobbs Act. Section V provides an analysis of the Court's interpretation of the plain language of the Hobbs Act, the distinction between bribery and extortion, and how the Court's holding perpetuates issues of state sovereignty and prosecutorial overreach.

II. STATEMENT OF THE CASE

Samuel Ocasio, a former police officer, participated in a kickback scheme in which he and other officers in the Baltimore Police Department ("BPD") directed damaged vehicles from accident scenes to a repair shop called Majestic Auto Repair ("Majestic") in exchange for payments.[4] Approximately sixty officers in the BPD sent damaged

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1. 136 S. Ct. 1423 (2016).
2. *Id.* at 1429.
3. *Id.* at 1427.
4. *Id.* at 1427.

cars to Majestic in exchange for $150 to $300 per referral.[5] Before sending a car to Majestic, Ocasio would call the shop owners from the accident scene to verify the make and model of the car, the damage, and the car's insurance coverage in order to ensure profitability.[6] Ocasio participated in the scheme from 2009 to 2011,[7] and by early 2011 nearly ninety percent of Majestic's customers came directly from officers at the BPD.[8] Later that year, the shop owners, Ocasio, and nine other police officers were indicted on charges of Hobbs Act extortion and conspiracy to commit Hobbs Act extortion.[9]

Ocasio challenged the conspiracy conviction, arguing that he could not be convicted of conspiring with the shop owners to extort money from the very same shop owners.[10] He requested a jury instruction that stated, "[i]n order to convict a defendant of conspiracy to commit extortion under color of official right, the government must prove . . . that the conspiracy was to obtain money or property from some person who was not a member of the conspiracy."[11] The trial court refused to give the proposed instruction.[12]

Ultimately, the District Court for the District of Maryland convicted Ocasio of Hobbs Act extortion and conspiracy to commit Hobbs Act extortion[13] and the Fourth Circuit affirmed.[14] The Supreme Court granted certiorari and likewise affirmed Ocasio's conviction.[15]

III. REASONING OF THE COURT

Ocasio was convicted under the general federal conspiracy statute, which makes it a crime to "conspire . . . to commit any offense against the United States."[16] The Court defined the underlying offense as extortion under the Hobbs Act, which prohibits 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

5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* at 1428.
9. *Id.*
10. *Id.* at 1429.
11. *Id.* at 1428.
12. *Id.*
13. United States v. Ocasio, No. CCB-1-11-CR-00122-013, 2012 WL 12092056, at *1 (D. Md. July 23, 2012).
14. United States v. Ocasio, 750 F.3d 399, 401 (4th Cir. 2014).
15. *Ocasio*, 136 S. Ct. at 1423.
16. 18 U.S.C. § 371 (2012).

right."[17] The phrase "under color of official right" refers to a public official or employee who uses the power and authority of his or her office to obtain money, property, or something of value to which he or she has no official right from another.[18]

The Court relied heavily on an in-depth analysis of traditional conspiracy law, perhaps at the expense of a thorough analysis of the distinction between extortion and bribery. According to the Court, in order to establish Ocasio's Hobbs Act conspiracy, the Government only needed to prove that there was an agreement for any one of the conspirators to commit each element of the substantive offense.[19] In other words, a conspirator simply had to agree that the underlying offense be committed by at least one member of the conspiracy capable of committing it.[20]

Ocasio's main argument was that the shop owners could not be members of a conspiracy to commit extortion when they willingly consented to pay the officers in exchange for referrals.[21] He argued that this was not extortion, but rather bribery.[22] The Court disagreed, holding that, although they could not extort themselves, the shop owners were capable of conspiring with the officers to be extorted.[23] The Court found that the elements of the conspiracy were satisfied because the officers were capable of extorting "another," even though the other party was a part of the conspiracy.[24]

The Court based its reasoning on cases involving the Mann Act,[25] which makes it a crime to transport a woman or cause her to be transported across state lines for an immoral purpose.[26] For example, the Court discussed *United States v. Holte*[27] in which a woman was charged for conspiring with a man to transport herself across state lines.[28] The trial court dismissed the charge holding that, because a woman could not be convicted for the substantive offense of

17. 18 U.S.C. § 1951 (2012).
18. KEVIN F. O'MALLEY ET. AL., FEDERAL JURY PRACTICE AND INSTRUCTIONS CRIMINAL § 53:09 (6th ed. 2015).
19. *Ocasio*, 136 S. Ct. at 1429.
20. *Id.*
21. *Id.* at 1433–34.
22. *Id.* at 1434.
23. *Id.* at 1432.
24. *Id.*
25. 18 U.S.C. §§ 2421–24 (2015).
26. *Id.*; *Ocasio*, 136 S. Ct. at 1430.
27. 236 U.S. 140 (1915).
28. *Id.* at 140.

transporting herself or causing herself to be transported across state lines, she also could not be convicted of conspiring to commit the offense.[29] The Supreme Court rejected that holding, stating that "a person may conspire for the commission of a crime by a third person," even if "she could not commit the substantive crime" herself.[30]

Similarly, in *Gebardi v. United States*,[31] a man and woman were convicted of conspiring to transport the woman from one state to another for an immoral purpose.[32] The Supreme Court stated that "[i]ncapacity of one to commit the substantive offense does not necessarily imply that he may with impunity conspire with others who are able to commit it."[33] Like in *Holte*, the Court agreed that a woman could be convicted of conspiring to cause herself to be transported across state lines.[34] However, in *Gebardi* the woman's "mere consent" or "acquiescence" was not enough to support the conspiracy convictions because she was not "the active or moving spirit in conceiving or carrying out the transportation."[35] These cases show that one can be guilty of conspiring to commit a crime even when they are incapable of actually committing the crime.

Applying this reasoning to *Ocasio*, the Court held that, even though the shop owners could not commit each element of the offense on their own, the elements of the crime were satisfied because the shop owners shared the common purpose that the officers would obtain money from another under color of official right.[36] The Court reasoned that if a woman can conspire to transport herself, then conspirators can conspire to extort themselves.[37] Although the shop owners were incapable of extorting themselves on their own, they were capable of conspiring with others to be extorted.[38] Based on this reasoning, the Supreme Court rejected Ocasio's arguments and affirmed his conviction.[39]

29. *Id.* at 141.
30. *Id.* at 144–45.
31. 287 U.S. 112 (1932).
32. *Id.* at 115–16.
33. *Id.* at 120.
34. *Id.* at 116–17.
35. *Id.* at 119.
36. Ocasio v. United States, 136 S. Ct. 1423, 1433 (2016).
37. *See id.* at 1431–32.
38. *Id.* at 1433–34.
39. *Id.* at 1437.

IV. HISTORICAL FRAMEWORK

A. The Hobbs Act

The Hobbs Act was enacted in 1946 to help the government combat racketeering associated with organized crime.[40] The Act prohibits actual or attempted robbery, extortion, or conspiracy that affects interstate commerce.[41] As noted above, it 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."[42] Victims of extortion must be induced by a belief that the defendant has the power to harm them or cause economic loss.[43] The crux of the offense is a subjective fear of loss by the victim.[44]

While this is the traditional understanding of extortion, the Supreme Court has since expanded the meaning of Hobbs Act extortion to include bribery.

B. Equating Extortion with Bribery

The language of the Hobbs Act plainly lacks the term bribery.[45] However, the Court in *Evans v. United States*[46] held that extortion by a public official was "the rough equivalent" of "taking a bribe."[47] In *Evans*, a county commissioner was convicted of extortion under color of official right for accepting money in exchange for a favorable zoning decision.[48] The Court held that it was enough that a public official had accepted a payment knowing that it was given in exchange for some exercise of official power,[49] and Evans's conviction for Hobbs Act extortion was affirmed.[50] The Court in *Evans* decided that

40. United States v. Culbert, 435 U.S. 371, 377 (1978).

41. 18 U.S.C. § 1951 (2012); United States v. Baylor, 517 F.3d 899, 903 (6th Cir. 2008).

42. 18 U.S.C. § 1951 (2012).

43. *See, e.g.*, United States v. Capo, 817 F.2d 947, 954 (2d Cir. 1987) (holding that the evidence was insufficient for a finding of Hobbs Act extortion where the "victims" were not coerced or threatened by defendants and did not reasonably fear economic loss).

44. Extortion is based on the wrongful use of an otherwise valid power. United States v. Hyde, 448 F.2d 815, 833 (5th Cir. 1971). If the power is used to intimidate and force others to pay, the action is extortion. *Id.*

45. *See* 18 U.S.C. § 1951 (2012).

46. 504 U.S. 255 (1992).

47. *Id.* at 260.

48. *Id.* at 296 (Thomas, J., dissenting).

49. *Id.* at 268.

50. *Id.* at 255.

even "passive acceptance" of a bribe by a public official can violate the Hobbs Act and eliminated the inducement element of extortion.[51] Other cases have similarly held that bribery and extortion are not mutually exclusive.[52]

Prior to *Evans*, federal prosecutors were unable to reach state and local officials through the federal bribery statute.[53] Since the Court equated extortion with bribery,[54] state officials who accept bribes can be charged with federal extortion under color of official right even if the briber is a co-conspirator that was in no way induced by a subjective fear of loss.[55] *Evans* paved the way for the holding in *Ocasio* by incorrectly equating extortion with bribery.

V. ANALYSIS

The plain language of the Hobbs Act does not indicate that Congress intended to punish the type of agreement made between Ocasio and the shop owners for two main reasons.[56] First, the officers did not obtain property from "another." Rather, they agreed to an exchange of money and favors amongst themselves. Second, the officers did not use force or wrongfully use color of official right to induce or initiate an exchange of property. Instead, the shop owners willingly agreed to enter into a mutual agreement with the officers.

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51. *Id.* at 258–59.

52. Many courts have convicted public officials of Hobbs Act extortion in the absence of any inducement on the part of the public official or fear on the part of the alleged victim. *See, e.g.*, United States v. Stephenson, 895 F.2d 867 (2d Cir. 1990) (finding Hobbs Act extortion where an official in the Department of Commerce accepted payments to influence a ruling); United States v. Spitler, 800 F.2d 1267 (4th Cir. 1986) (finding Hobbs Act extortion where a state highway administrator accepted money from a road building contractor in exchange for favors); United States v. Wright, 797 F.2d 245 (5th Cir. 1986), *cert. denied*, 481 U.S. 1013 (1987) (finding Hobbs Act extortion where city prosecutors accepted money for not prosecuting drunk drivers).

53. The federal bribery statute, 18 U.S.C. § 201 (2012), generally applies only to federal public officials; federal prosecutors pursuing bribery on the state and local level must use a different theory. Randall Eliason, Ocasio v. United States*: The Supreme Court Confronts the Blurred Line between Bribery and Extortion*, SIDEBARS, (Oct. 19, 2015) https://rdeliason.com/20 15/10/19/ocasio-supreme-court-bribery-extortion-hobbs.

54. *Ocasio*, 136 S. Ct. at 1437 (Thomas, J., dissenting).

55. Rory Little, *Opinion Analysis: Federal Conspiracy Law Reaches Persons Who Agree to Obtain Secret Kickbacks from a Member of the Conspiracy*, SCOTUSBLOG (May 2, 2016, 5:33 PM), http://www.scotusblog.com/2016/05/opinion-analysis-federal-conspiracy-law-reaches-persons-who-agree-to-obtain-secret-kickbacks-from-a-member-of-the-conspiracy.

56. The statute plainly discusses robbery and extortion, but does not include bribery. If Congress intended to include bribery of a public official in the Hobbs Act, then it would have done so. For example, in the Travel Act, Congress explicitly criminalized state and local "extortion, bribery, [and] arson." 18 U.S.C. § 1952 (2012). Congress tellingly left bribery out of the Hobbs Act.

These two arguments are discussed in turn below. They are followed by an analysis of the implications of the holding in *Ocasio* as it pertains to state sovereignty and prosecutorial overreach.

A. Defining "Another"

The plain language of the Hobbs Act requires that property be taken from "another," not from someone within the conspiracy.[57] Yet, the Government argued, and the Court agreed, that a conspiracy to obtain property from another includes an agreement between two parties to exchange property between themselves.[58] This unnatural reading of the Hobbs Act adds to the blurring of the distinction between extortion and bribery.

The majority largely based its reasoning on an analysis of the Mann Act.[59] However, as Justice Sotomayor noted in her dissent, the language of the Mann Act does not compare to the language in the Hobbs Act.[60] Unlike the Hobbs Act, which requires "another" person, the Mann Act pertains to the transportation of "any woman."[61] A conspiracy to agree to transport "any woman," in violation of the Mann Act, naturally includes any woman who is a part of the conspiracy.[62] The same cannot be said of the Hobbs Act's specific requirement that the conspirators as a whole agree to obtain property from "another."[63]

Justice Sotomayor further explained that "any" is not a relational word that requires a determination of who is in a group and who is not, whereas the term "another" does.[64] "Another" describes how one entity is connected to a different entity that must be "different or distinct from the one first considered."[65] A conspiracy is "a partnership in crime," so the law treats a conspiracy as one distinct entity.[66] As a whole, the conspirators must seek to obtain property from a distinct entity to satisfy the meaning of "another."[67] Simply

57. 18 U.S.C. § 1951 (2012).
58. *See Ocasio*, 136 S. Ct. at 1426.
59. *Id.* at 1442–43 (Sotomayor, J., dissenting).
60. *Id.* at 1443.
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.* at 1441; *Another*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003).
66. *Ocasio*, 136 S. Ct. at 1441–42 (Sotomayor, J., dissenting).
67. *Id.* at 1442.

stated, at least one member of the group must seek to obtain property from someone who is not a part of the group.[68]

Applying this understanding of the Hobbs Act, the Sixth Circuit in *United States v. Brock*[69] held that "three people did not agree, and could not have agreed, to obtain property from 'another' when no other person was involved."[70] In *Brock*, the defendants were also convicted of conspiring to commit Hobbs Act extortion where the underlying conduct was more akin to bribery.[71] The Sixth Circuit held that the person paying a bribe to a state official could not conspire with that official to extort property from himself in violation of the Hobbs Act.[72] This is the most logical application of the plain language in the act, yet the Supreme Court, consistent with the reasoning in *Evans*, abrogated *Brock*.[73]

Similar to the conspirators in *Brock*, the conspirators in *Ocasio* agreed that the officers would take property from people who were part of the conspiracy.[74] There is no question that the shop owners in *Ocasio* were conspirators involved in the scheme as opposed to "another" being extorted by the officers. Although the law treats a conspiracy as one distinct entity, the Supreme Court decided that "another" could be determined from the perspective of each individual within the conspiracy.[75] This means that any one conspirator can be considered "another" despite being a part of the very same conspiracy. This interpretation of the language in the Hobbs Act has resulted in illogical holdings such as the one in *Ocasio* and will continue to do so until *Evans* is overturned.

B. Distorting Extortion

The Court has unilaterally read bribery into the meaning of the Hobbs Act. Bribery and extortion are distinct crimes and the majority's decision in *Ocasio* perpetuates the elimination of the distinction under the Hobbs Act.[76] The main difference between

68. *Id.*
69. 501 F.3d 762 (6th Cir. 2007).
70. *Id.* at 767.
71. *Id.*
72. *Id.* at 764.
73. *Ocasio*, 136 S. Ct. at 1423.
74. *Id.*
75. *Id.* at 1442 (Sotomayor, J., dissenting).
76. *Id.* at 1439 (Thomas, J., dissenting).

bribery and extortion is the role of each party. Extortion requires initiative or purpose on the part of the public official and fear or lack of voluntariness from the victim.[77] With extortion, the public official is the only offender and the payor is an innocent victim.[78] The person who pays the public official is not considered a willing participant of a corrupt deal.[79] On the other hand, with bribery, the public official does not need to feign a right or entitlement because the payor knows the official is not entitled to the payment.[80] With a bribe, both sides of the transaction are guilty parties to a corrupt deal.[81]

This distinction is problematic because the Hobbs Act does not prohibit a victim's payment of extortion; it only punishes the public official.[82] By equating extortion with bribery, the Court in *Evans* created a prohibition on bribery, a crime involving two guilty parties, based on a portion of a statute that only punishes the public official.[83] The Supreme Court has essentially carved out an exception that allows federal prosecutors to charge state and local officials with conspiracy to commit Hobbs Act extortion in the absence of any actual extortion.[84]

In *Ocasio*, the owners of Majestic were not victims. Not only were they complicit in the scheme, they greatly benefited from it as ninety percent of Majestic's business came directly from police referrals.[85] The agreement was mutually beneficial and collaborative with no inducement or fear.[86] As such, Ocasio was not guilty of conspiring to commit extortion; rather, he was guilty of conspiring to engage in bribery, which the Hobbs Act does not explicitly target.

Conspiracy has been criticized as a "vague and elastic" charge that fits a prosecutor's needs in any given case.[87] The Court has

77. United States v. Hyde, 448 F.2d 815, 833 (5th Cir. 1971).

78. *Ocasio*, 136 S. Ct. at 1438 (Thomas, J., dissenting).

79. Randall Eliason, *Extortion Distortion:* Ocasio v. United States, SIDEBARS (May 12, 2016), https://rdeliason.com/2016/05/12/extortion-distortion-supreme-court-hobbs-ocasio-v-united-states.

80. *Ocasio*, 136 S. Ct. at 1438 (Thomas, J., dissenting).

81. Eliason, *supra* note 79.

82. *Id.*

83. *Id.*

84. *See, e.g.*, United States v. Butler, 618 F.2d 411, 419 (6th Cir. 1980) (finding Hobbs Act extortion where appellants were passive recipients of bribes with no inducement or initiation of transfer of payment).

85. *Ocasio*, 136 S. Ct. at 1438–39.

86. *Id.* at 1427.

87. *Id.* at 1445–46 (Sotomayor, J., dissenting) (citing Krulewitch v. United States,

cautioned that it "will view with disfavor attempts to broaden the already pervasive and wide-sweeping nets of conspiracy prosecutions."[88] Yet, it failed to do so in *Ocasio*.

To the extent the Court relied on traditional conspiracy law, it was correct in concluding that Ocasio entered into a conspiracy to commit a crime. However, the underlying crime was not extortion. The Court thoroughly analyzed traditional conspiracy law and failed to adequately address the distinction between extortion and bribery. Instead, it relied on its flawed reasoning in *Evans*, which has resulted in the notion that public officials "exude an aura of coercion at all places and at all times," simply by virtue of their title.[89]

The Court could have used the general principles of conspiracy law to come to the correct conclusion if Ocasio had been charged with conspiracy to commit the proper underlying crime. There are other criminal statutes that reach the conduct at issue here.[90] Hobbs Act extortion is meant to prohibit public officials from obtaining property from others by extorting them. While bribery is certainly prohibited by law, the Hobbs Act is not the proper avenue by which to pursue such charges. Under the Supreme Court's interpretation of the Hobbs Act, state and local officials can be convicted of Hobbs Act extortion with the potential for a twenty-year prison sentence for taking a bribe.

C. Prosecutorial Overreach

The Hobbs Act provides an avenue for the expansion of federal criminal jurisdiction into a field traditionally left to state and local laws.[91] The Court briefly noted that Ocasio's invocation of principles of federalism was unavailing, yet it did not cite any authority justifying the intrusion on state bribery laws.[92] The holding in *Ocasio* challenges state sovereignty and encourages federal prosecutorial overreach.

The Supreme Court has stated, "[u]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed

336 U.S. 440, 445–57 (1949) (Jackson, J., concurring)).

88. *Id.* at 1445 (citing Grunewald v. United States, 353 U.S. 391, 404 (1957)).

89. Evans v. United States, 504 U.S. 255, 290 (1992).

90. *See, e.g.*, 18 U.S.C. § 666 (2012) (criminalizing bribery of state, local, or tribal officials in specified circumstances); MD. CODE. ANN., CRIM. LAW § 9-201 (West 2012) (criminalizing bribery of public employees).

91. *Ocasio*, 136 S. Ct. at 1434.

92. *Id.*

the federal-state balance in the prosecution of crimes."[93] Congress failed to make its intent for federal prosecutors to regulate bribery by state and local officials "unmistakably clear in the language of the" Hobbs Act.[94] Instead, Congress's intention was arguably the opposite, as it did not include bribery in the statute.[95] When Congress wants to criminalize state and local bribery, it knows how to do so.[96] If Congress intended to criminalize parties to a bribe under the Hobbs Act, then it would have done so explicitly.[97]

The lack of congressional intent is further evidenced by the fact that the federal bribery statute, 18 U.S.C. § 201, only applies a two-year penalty for bribery committed by federal officials[98] while the Hobbs Act carries a significantly higher twenty-year penalty.[99] It is unlikely that Congress intended for such a heavy penalty to apply to state and local bribery when it only included a two-year penalty for the same offense by federal officials.[100] It is likely that Congress intended for extortion to carry a heavy penalty because of the severity of the conduct involved. On the other hand, bribery, while warranting culpability, does not rise to the level of extortion and should not carry the same penalty.

The Court's failure to heed Congress's intent has allowed for federal prosecutorial overreach.[101] Federal prosecutors consistently seek to prosecute state and local corruption,[102] but they are rightfully

93. *Id.* at 1439 (Thomas, J., dissenting) (citing Jones v. United States, 529 U.S. 848, 858 (2000)).

94. Gregory v. Ashcroft, 501 U.S. 452, 460 (1991).

95. *Ocasio*, 136 S. Ct. at 1439 (Thomas, J., dissenting).

96. Both 18 U.S.C. § 1952 (2012) and 18 U.S.C. § 666 (2012) explicitly criminalize state and local bribery. On the other hand, 18 U.S.C. § 201 (2012) specifically applies only to federal public officials. As such, Congress knew exactly how to criminalize state and local bribery if it so intended.

97. Compare the language of 18 U.S.C. § 872, which criminalizes extortion by the federal official, but not the payor, with 18 U.S.C. § 201 (2012), which criminalizes both parties to a bribe involving a public official. *Evans*, 504 U.S. at 283–84 (Thomas, J., dissenting).

98. Charles N. Whitaker, Note, *Federal Prosecution of State and Local Bribery: Inappropriate Tools and the Need for a Structured Approach*, 78 VA. L. REV. 1617, 1617 (1992).

99. *Id.*

100. *Id.*

101. Congress, of course, could step in and amend the Hobbs Act or enact a federal statute that specifically targets state and local bribery to resolve the misinterpretation. *See e.g.*, Eliason, *supra* note 79.

102. *See* U.S. DEP'T OF JUSTICE, REPORT TO CONGRESS ON THE ACTIVITIES AND OPERATION OF THE PUBLIC INTEGRITY SECTION FOR 2014 at 16 (2014), https://www.justice.gov/criminal/file/798261/download (listing several cases outlining federal prosecution of state and local officials for corruption crimes).

subject to statutory constraints.[103] The Court in *Evans* interpreted the Hobbs Act to allow prosecutors to bypass such constraints and prosecute conduct not explicitly proscribed by statute. With renewed support from *Ocasio*, federal prosecutors will undoubtedly continue to charge state and local officials in a manner that is inconsistent with a plain reading of the Hobbs Act.

VI. CONCLUSION

It was unnecessary for the Supreme Court to expand the reach of federal prosecutors by interposing bribery into the Hobbs Act. Surely Congress would have expressly included bribery in the language of the act if that were the conduct it sought to punish. However, the Supreme Court interpreted the Hobbs Act to include bribery and it has not faltered in its interpretation. Unfortunately for potential petitioners seeking to overturn *Evans*, the Court seems to have dug its heels in with *Ocasio*. The number of Supreme Court Justices who are likely to get on board with a re-examination of the holding in *Evans*, likely including Justice Thomas and Justice Breyer, is simply too small to be effective at this time. It is also unlikely that Congress will step in to resolve the misinterpretation in light of the almost twenty-five years of radio silence since *Evans* was decided.

As evidenced by *Ocasio*, the Hobbs Act will continue to function as a powerful tool that allows federal prosecutors to charge federal and state officials, not only with the crimes listed in the statute, but also with a crime that has since become roughly equivalent.

103. Brief for Former United States Attorneys as Amicus Curiae Supporting Petitioner at 6, Ocasio v. United States, 136 S. Ct. 1423 (2016) (No. 14-361).