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2 There's some question whether just growing marijuana for  
3 your own use by itself is commerce, or whether it's an  
4 activity that affects commerce that would bring it  
5 within --

6 JUSTICE KENNEDY: Let's say --

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

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

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

15 JUSTICE KENNEDY: Is contested commerce  
16 part -- part of the indictment?

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

21 JUSTICE KENNEDY: Let's -- let's assume --  
22 let's assume the Court has decided that --

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

24 JUSTICE KENNEDY: -- and then there's a  
25 trial.

1                   Is -- is the defendant entitled to introduce  
2 any evidence on that point?

3                   MR. YANG: No.

4                   JUSTICE KENNEDY: So --

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

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

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

12                  JUSTICE KENNEDY: What --

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

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

1 any case.

2 MR. YANG: I don't --

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

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

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

19 And here, what we have is the same type of  
20 thing through the Hobbs Act, which I believe my brother  
21 has admitted both at, I think it's page 18 of his brief  
22 and at oral argument, extends to the full extent of the  
23 Commerce Clause. The whole purpose of enacting an  
24 "affects commerce" provision is so you don't go through  
25 and have Congress -- the burden of it, you know, then

1 drug dealers and we have to do, you know, robberies of  
2 this business and that. Congress exercised the full  
3 scope of its power. And so --

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

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

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

23 MR. YANG: What you're seeing is part of the  
24 whole Federal investigation here, if you remember that  
25 this was an investigation into the Southwest Goonz,

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

11 CHIEF JUSTICE ROBERTS: The tagalong, he got  
12 20 years.

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

16 JUSTICE KENNEDY: Actually, I think got 21,  
17 my chambers was telling me. You might check that.

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

19 JUSTICE KENNEDY: Which is, to me, one --  
20 one year too many, but whatever.

21 Going -- going back to this case, the  
22 example that you gave with reference to the maritime  
23 jurisdiction, what you tell the jury is, ladies and  
24 gentlemen of the jury, if you find that the incidents  
25 that have been considered in this court occurred on the

1 high seas, then the jurisdictional element is satisfied.

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

4 JUSTICE KENNEDY: Pardon me?

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

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

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

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

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

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

25 MR. YANG: I think that's right in this

1 particular case because that's the only factual question  
2 that's really relevant.

3 JUSTICE KAGAN: Well, maybe the person  
4 wasn't a dealer.

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

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

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

11 JUSTICE KAGAN: You said it was a very  
12 different thing.

13 MR. YANG: It was a different thing. And it  
14 supports --

15 JUSTICE KAGAN: And it would be a much  
16 harder thing.

17 MR. YANG: It would be harder.

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

22 MR. YANG: That's correct.

23 CHIEF JUSTICE ROBERTS: Even though Congress  
24 can regulate that transaction?

25 MR. YANG: Well, there -- there would be a

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

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

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

16                   MR. YANG: It does. It does. Not only  
17 that, but I think --

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

24                   MR. YANG: That's correct.

25                   JUSTICE ALITO: So if one person steals a



1 marijuana cigarette from another person, robs that  
2 person of one marijuana cigarette, that's a violation of  
3 the Hobbs Act?

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

12 JUSTICE ALITO: It falls within the Commerce  
13 Clause, doesn't it?

14 MR. YANG: It falls -- certainly the  
15 possession is something that Congress can regulate as  
16 Raich teaches. Now, whether the robbery of one  
17 possessing, that's yet additional -- an additional link  
18 into the Commerce Clause inquiry. And what I can say is  
19 that the courts of appeals have recognized, as this  
20 Court has, the -- in a search for the outer limits of  
21 the Commerce Clause, the courts have pulled back and  
22 they've suggested that when you're robbing just a mere  
23 individual who's not a business or engaged in a business  
24 in the -- in the context of the robbery, that raises  
25 different questions and it's much more difficult to

1 establish necessary nexus.

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

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

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

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

1 JUSTICE KENNEDY: What is your understanding  
2 of what the defendant wanted to -- the evidence the  
3 defendant wanted to introduce?

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

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

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

14 JUSTICE KENNEDY: I understand that.

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

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

18 MR. YANG: And at least at a minimum who the  
19 defendants believed were in the drug trade, and that's  
20 really what the relevant question is here. Because if,  
21 for instance, there's -- you know, two people make an  
22 elaborate plan to rob a bank and then they end up  
23 showing up at a business that's not a bank, it's  
24 actually someone's house, they can be charged with  
25 either a conspiracy or an attempt charge based on the

1 facts as they -- as they understood them.

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

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

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

20 JUSTICE SOTOMAYOR: I understand the  
21 charges, counsel.

22 MR. YANG: So in the normal case, and this  
23 is the -- this is kind of the -- the mind run of cases  
24 that all the courts of appeals have accepted are as kind  
25 of a depletion-of-assets theory case.

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

8                   JUSTICE SOTOMAYOR: Engages how, either by  
9 buying goods in commerce --

10                  MR. YANG: Buying goods from out of State,  
11 selling to out-of-State customers, buying equipment from  
12 out of State, all types of things.

13                  JUSTICE SOTOMAYOR: Let's assume that that's  
14 true.

15                  MR. YANG: Uh-huh.

16                  JUSTICE SOTOMAYOR: Is the jury charged that  
17 this particular robbery had to affect that?

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

24                  JUSTICE SOTOMAYOR: Right.

25                  MR. YANG: -- what you're doing is you're

1 depleting the assets of an enterprise that is engaging  
2 in interstate commerce. And so by doing that, you're  
3 hindering its ability to engage in interstate commerce  
4 on a prospective basis.

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

8 MR. YANG: Or has the potential to.

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

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

21 Our position is that is not necessary  
22 because we know already -- although that's one means of  
23 showing an effect on interstate commerce, there are  
24 other means. And the theory here is that the robbery  
25 affects commerce over which the United States has

1 jurisdiction.

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

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

14           CHIEF JUSTICE ROBERTS: Thank you, counsel.

15           Mr. Jones, you have five minutes remaining.

16           REBUTTAL ARGUMENT OF DENNIS E. JONES

17           ON BEHALF OF THE PETITIONER

18           MR. JONES: Thank you, Your Honor.

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

23           Taking the extension that my friend is  
24 suggesting here, if we read the last phrase of the Hobbs  
25 Act, it says, "All other commerce over which the United

1 States has jurisdiction."

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

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

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

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

22 The government should have to prove that  
23 element so that the jury, in its deliberations, would  
24 make that independent finding on that element on the  
25 jurisdictional element.



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Any questions?

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

CHIEF JUSTICE ROBERTS: Thank you, counsel.  
Case is submitted.

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

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