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# SCOTUS Clarifies 'Crimes of Violence' for Sentencing in Gun Cases

Covington & Burling partner Daniel Suleiman examines a recent Supreme Court ruling on what counts as a "crime of violence" that will affect federal gun cases with mandatory minimum sentences. One thing is clear following the ruling—prosecutors will understand now that they must justify to judges and the public the decision to deploy mandatory minimum sentencing statutes.

Although the US Supreme Court decision June 21 in *United States v. Taylor* wasn't one of the court's "blockbusters," it nevertheless was an impactful case in the area of federal criminal law.

The court, in a 7-2 decision, held that attempted Hobbs Act robbery—essentially, the federal robbery statute—can no longer qualify as a "crime of violence" for purposes of certain mandatory minimum sentencing enhancements.

## Implications of Decision

On one level, *Taylor* involves a relatively abstract legal issue: whether convicting someone for attempted Hobbs Act robbery requires the government to prove, as an element of the offense, the "use, attempted use, or threatened use" of physical force. The debate around this question became almost philosophical during oral argument,

with the justices debating whether, for example, entering a bank with a wooden gun that nobody else can see constitutes an “attempt to threaten force.”

At the same time, *Taylor* has meaningful real-world implications. If proving attempted Hobbs Act robbery required the government to prove that the defendant used, attempted to use, or threatened to use physical force, then it would qualify as a “crime of violence” under 18 U.S.C. 924(c) of the federal criminal code.

Section 924(c), long a bane of sentencing judges, imposes certain severe mandatory minimum sentences—involving up to decades of additional prison time—for using a firearm in connection with a “crime of violence.” No “crime of violence,” no sentencing enhancement. In Justin Taylor’s case, the Section 924(c) conviction resulted in 10 additional years being tacked on to a 20-year sentence for attempted robbery.

Over the past several years, the Supreme Court has steadily narrowed the scope of Section 924(c). In 2019, for example, in *United States v. Davis*, the court invalidated part of the statute as unconstitutionally vague. Perhaps to the dismay of prosecutors, *Taylor* continues this trend, and while not unanimous, the decision signals that a strong, ideologically mixed, contingent of the court favors a narrow reading of the law. It’s worth asking why.

In a case I handled several years ago, a federal judge was faced with the prospect of sentencing a defendant to a mandatory minimum sentence of 82 years in prison on four counts under Section 924(c). The judge was reluctant to impose the sentence and appointed me to evaluate whether there was any legal principle that could allow him not to impose the sentence. (I took the case and, eventually, and following passage of the First Step Act, the judge sentenced the defendant to 28 years on the 924(c) counts.)

Other judges have had similarly negative reactions to being forced to impose what they consider to be irrational, yet required, prison terms. The reason why is clear: Some of the sentences required by Section 924(c) and other mandatory minimum sentencing statutes simply bear no rational relationship to the underlying offense.

As retired Judge Shira A. Scheindlin put in a Washington Post piece, “Mandatory minimums were almost always excessive, and they made me feel unethical, even dirty.”

## First Step Act

The First Step Act, passed into law in 2018, brought a measure of rationality to Section 924(c) by prohibiting the so-called "stacking" of 25-year sentences in a single case that had led my client to face 82 years in prison. But the act didn't go far enough in the eyes of many judges, and courts have recently been allowing defendants to invoke the "compassionate release" provision of the First Step Act to side-step mandatory minimums imposed by Section 924(c) and other statutes.

Indeed, now-Justice Ketanji Brown Jackson had done exactly that in a narcotics case that, during her recent Supreme Court nomination hearings, became the focus of intense scrutiny by certain conservative senators.

Justice Neil Gorsuch wrote the *Taylor* decision. Known as a textualist, he grounded his opinion in the language of the statute, illustrating by way of a hypothetical criminal who attempts but fails to rob a store, that one need not use, attempt to use, or threaten to use force in order to commit attempted Hobbs Act robbery. His reasoning was powerful enough to persuade six other justices to join the opinion (only Justices Clarence Thomas and Samuel Alito dissented).

## Moving Forward

It's tempting to view this case as merely presenting an issue of statutory interpretation—that is, not to read into it any commentary on the wisdom of Section 924(c)'s mandatory minimum sentences.

But, as abstract as the legal question is, it is also hard to avoid the real-world implication of whether an offense qualifies as a "crime of violence." In Taylor's case, it was 10 years in prison. In other cases, it's decades.

One thing is clear: After *Taylor*, and the line of cases it follows, prosecutors will understand even more that they have to be able to justify to judges and the public the decision to deploy Section 924(c) and other mandatory minimum sentencing statutes or else risk having their convictions overturned.

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