

No. ____ - ____ (19A596)

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES WILLIAM HILL, III,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**SECOND APPLICATION FOR EXTENSION OF TIME IN WHICH
TO FILE PETITION FOR A WRIT OF CERTIORARI**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit
Justice for the Fourth Circuit:

Petitioner James William Hill, III, by his counsel, respectfully makes application pursuant to Supreme Court Rule 13.5 and Rule 22 to extend the time in which to file a petition for writ of certiorari from the judgment entered by the United States Court of Appeals for the Fourth Circuit. In support thereof, counsel states the following.

1. As described in our first application for an extension of time, this case has a complex procedural history. Mr. Hill was charged under the federal Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249(a)(2), after an altercation with a co-worker during a shift they were working at an Amazon warehouse. According to the trial evidence, Mr. Hill punched

the victim in the face, and did not use any weapons or travel in interstate commerce to commit the offense.

In charging Mr. Hill, the government relied on one of the HCPA's jurisdictional "circumstances" in asserting that the assault fell within federal authority to prosecute. That prong stated that the assault "interfere[d] with commercial or other economic activity in which the victim is engaged at the time of the conduct." *See* 18 U.S.C. § 249(a)(2)(B)(iv)(I).

2. The district court granted Mr. Hill's motion to dismiss the indictment, holding that the HCPA was unconstitutional. The court concluded that the act went beyond the limits of congressional power under the Commerce Clause of the Constitution because, as applied to Mr. Hill, it did not regulate conduct that had a substantial effect on interstate commerce. *See United States v. Hill*, 182 F. Supp. 3d 546, 555-56 (E.D. Va. 2016).

The government appealed and a divided panel of the Fourth Circuit reversed and remanded for trial. *United States v. Hill*, 700 F. App'x 235 (4th Cir. 2017). The panel majority did not address the merits of the Commerce Clause challenge, but instead decided that the district court's action was premature. *Id.* at 236-37. The court remanded the case for trial, in order for a sufficient factual record to be developed. *Id.* at 237-38. In remanding the case, the Fourth Circuit observed that the central issue at trial would be "determining whether Hill's conduct *substantially* affected interstate commerce." *Id.* at 237 n.5 (emphasis in original).

3. At trial, the jury convicted Mr. Hill, but the district court granted his motion for a judgment of acquittal, again holding that the HCPA was unconstitutional as applied to Mr. Hill's conduct. *See United States v. Hill*, 2018 WL 3872315 (E.D. Va. Aug. 15, 2018).

The government again appealed and a divided panel of the Fourth Circuit reversed. The majority held that the Act was constitutional. App. 7a-34a. The majority analogized the HCPA to the Hobbs Act and the federal arson statute, and reasoned that the law's jurisdictional prong rendered it a regulation of economic activity within Congress's purview. App. 13a-17a; 25a-26a.

Judge Agee dissented. App. 38a-69a. He applied the factors set out in *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), for analyzing the constitutionality of a statute under the Commerce Clause. App. 40a. In his opinion, the jurisdictional hook in the HCPA did not alter what the law regulated at its core: wholly intrastate violent conduct. App. 49a-52a. Because the majority opinion did not contain a limiting principle, adopting its reasoning would create a general federal police power that would "barely have an end." App. 59a-62a. Finally, in addition to these concerns about federalism, the doctrines of constitutional avoidance and the rule of lenity counseled in favor of construing the statute not to apply to Mr. Hill's conduct. App. 66a-68a.

4. Mr. Hill petitioned for rehearing en banc. After calling for a government response, the Fourth Circuit denied the petition. App. 70a. Judge Agee issued a statement respecting the denial, stating that "[t]he issues here are of significant national importance and

are best considered by the Supreme Court at the earliest possible date in order to address the essential jurisdictional question under the Commerce Clause.” App. 71a. He elaborated that

[i]n the almost two decades since the Supreme Court opined on how a jurisdictional element could theoretically bring the regulation of noneconomic activity within Congress’ Commerce Clause power, it has not applied the broad principles discussed in *Lopez* and *Morrison* to any specific statutory language. This case provides the clear opportunity for the Court to revisit those decisions and provide clarity and direction on an essential constitutional question. Given the number of ways in which the Court’s decision in this case fails to adhere to the Supreme Court’s holdings in *Lopez* and *Morrison* and the unusual statutory language Congress used in subsection (B)(iv)(I), this case is prime for Supreme Court review.

App. 74a.

5. The Fourth Circuit issued its order denying rehearing en banc on September 24, 2019. App. 70a. This Court has jurisdiction under 28 U.S.C. § 1254(1). Mr. Hill’s petition for certiorari is presently due on January 22, 2020, following a previous extension of 30 days for the filing of a petition for certiorari granted by the Chief Justice on November 27, 2019. The Fourth Circuit has stayed its mandate pending the resolution of the petition for certiorari. *See* 4th Cir. No. 18-4660, Doc. 72 (Oct. 15, 2019).

6. Since the Chief Justice granted our previous request for an extension of time, counsel of record has filed the reply brief in *United States v. Garcia*, 4th Cir. No. 19-4458 (November 27); a reply brief in *United States v. Kasey*, 4th Cir. No. 19-4467 (December 6); and the opening brief in *United States v. Diaz-Martinez*, 4th Cir. No. 19-4642 (January 6). Counsel also presented oral argument in *United States v. Morgan*, 4th Cir. Nos. 19-4017 (L),

19-4018 (December 10). Counsel was out of the office from December 25 to January 1 for a family trip for the holidays.

In the coming weeks, counsel has due the opening brief in *United States v. Phillip Thompson*, 4th Cir. No. 19-4807 (January 21); the reply brief in *United States v. Dennis*, 4th Cir. No. 19-4494 (January 26); the opening brief in *United States v. Terrazas-Silas*, 4th Cir. No. 19-4802 (January 30); the opening brief in *United States v. Bragg*, 4th Cir. No. 19-4731 (February 3); and the reply brief in *Diaz-Martinez*, *supra* (February 6). Finally, counsel will be helping coordinate moots and will sit second-chair for an en banc Fourth Circuit argument scheduled for January 30, and that task will require two days out of the office.

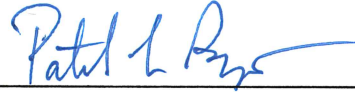
7. Counsel has been proceeding diligently and has completed some work on the petition. But this is a complex case that has already included two government appeals, two divided Fourth Circuit opinions, and written opinions from two judges finding that a federal statute is unconstitutional. The issue to be raised in Mr. Hill's certiorari petition is a significant one that, in the words of Judge Agee, is "prime for Supreme Court review." An extension of time is necessary in order to complete the petition and to provide Mr. Hill will effective assistance of counsel.

8. In light of counsel's briefing deadlines and other obligations, counsel requests a second and final extension of 30 days, from January 22 to February 21, 2020, in which to file the petition for writ of certiorari in Mr. Hill's case.

Wherefore, Petitioner prays that this application be granted.

Respectfully submitted,

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