No. 19-7778

IN THE SUPREME COURT OF THE UNITED STATES

JAMES WILLIAM HILL, III, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether 18 U.S.C. 249(a)(2) is a constitutional exercise of Congress's Commerce Clause power as applied to petitioner's conviction for a bias-motivated assault of a coworker who was actively engaged in the packaging of goods for interstate sale and shipment at the time of the assault.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-39a) is reported at 927 F.3d 188. A prior opinion of the court of appeals is not published in the Federal Reporter but is reprinted at 700 Fed. Appx. 235. The opinion of the district court (Pet. App. 40a-48a) is not published in the Federal Supplement but is available at 2018 WL 3872315. A prior opinion of the district court is reported at 182 F. Supp. 3d 546.

JURISDICTION

The judgment of the court of appeals was entered on June 13, 2019. A petition for rehearing was denied on September 24, 2019

(Pet. App. 49a-53a). On November 27, 2019, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including January 22, 2020. On January 9, 2020, the Chief Justice further extended the time to and including February 21, 2020, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Virginia, petitioner was found guilty of willfully causing bodily injury that interfered with the victim's contemporaneous commercial or other economic activity, because of the victim's actual or perceived sexual orientation, in violation of 18 U.S.C. 249(a)(2). Pet. App. 8a. The district court granted petitioner's motion for a judgment of acquittal on the theory that the application of Section 249(a)(2) exceeded Congress's authority under the Commerce Clause. Id. at 40a-48a. The court of appeals reversed. Id. at 1a-39a.

1. Petitioner assaulted his coworker, Curtis Tibbs, at an Amazon warehouse in Chester, Virginia, while both men were actively preparing goods for interstate sale and shipment. Pet. App. 6a. Tibbs's job included loading items into boxes for packaging, scanning the packages, and placing them on a conveyer belt. Ibid. On May 22, 2015, Tibbs was carrying items to load into a box when petitioner, without provocation, approached from behind and

punched him repeatedly in the face. Ibid. The items that Tibbs was carrying flew into the air and scattered across the warehouse floor. Id. at 15a. Petitioner subsequently admitted to an Amazon investigator and to a local police officer that he had assaulted Tibbs because Tibbs was gay. Id. at 7a.

As a result of the attack, Tibbs suffered bruising, cuts to his face, and a bloody nose. Pet. App. 7a. Tibbs initially went to Amazon's medical clinic for treatment, and then to the hospital upon the recommendation of clinic staff. Id. at 40a. Amazon closed the area where Tibbs and petitioner had been working to clean Tibbs's blood off the floor. Id. at 7a. The incident did not, however, cause Amazon to miss an unusual number of shipping deadlines, because Amazon was able to reassign the two men's work to other areas within the facility. Ibid.

2. A grand jury returned an indictment charging petitioner with willfully causing bodily injury to Tibbs -- thereby "interfer[ing] with commercial and other economic activity in which [Tibbs] was engaged at the time of the conduct" or "otherwise affect[ing] interstate and foreign commerce" -- because of Tibbs's actual or perceived sexual orientation, in violation of Section 249(a)(2). Pet. App. 7a (citation omitted; second set of brackets in original). Petitioner moved to dismiss the indictment, arguing, among other things, that Section 249(a)(2) was unconstitutional on its face and as applied to him. See 182 F. Supp. 3d 546. The

district court granted the motion, concluding that Section 249(a)(2) was unconstitutional on the theory that it exceeded Congress's Commerce Clause authority as applied to petitioner. Id. at 555. The court did not address petitioner's facial challenge. Id. at 556.

The court of appeals reversed with orders to reinstate the indictment. 700 Fed. Appx. 235. It found that the indictment was "legally sufficient" on its face because -- in accord with the jurisdictional requirements of the statute, see 18 U.S.C. 249(a)(2)(B) -- it "specifically allege[d] that Hill's conduct had an effect on interstate commerce." 700 Fed. Appx. at 236-237. The court further observed that "[b]ecause this is an as-applied challenge, whether [petitioner's] conduct sufficiently affects interstate commerce as to satisfy the constitutional limitations placed on Congress' Commerce Clause power may well depend on a consideration of facts," and that it was therefore "premature to determine the constitutional issues" before those facts were "developed at trial." Id. at 237.

3. At trial, the jury instructions on the statute's jurisdictional element allowed for a guilty verdict only if the jury found beyond a reasonable doubt that petitioner's actions "interfered with the commercial or economic activity in which Tibbs was engaged at the time of the conduct." Pet. App. 8a (citation omitted); see 18 U.S.C. 249(a)(2)(B)(iv)(I). The jury was not

instructed on the indictment's alternate allegation that the conduct "otherwise affect[ed] interstate or foreign commerce." 18 U.S.C. 249(a)(2)(B)(iv)(II); see Pet. App. 8a. After a two-day trial, the jury found petitioner guilty. Pet. App. 8a.

The district court granted petitioner's motion for a judgment of acquittal, again deeming Section 249(a)(2) unconstitutional as applied. Pet. App. 40a-48a. The court characterized Section 249(a)(2) as regulating "discriminatory crimes of violence" rather than "economic activity." Id. at 44a. It stated that Section 249(a)(2) "comes closest to passing constitutional muster as applied to [petitioner] through its jurisdictional element, which requires the offense to interfere with the victim's commercial or economic activity," id. at 46a, but viewed the prosecution here to be unconstitutional on the premise that petitioner's "assault on [Tibbs]" did not itself "substantially affect[] interstate commerce," id. at 47a.

4. The court of appeals reversed. Pet. App. 6a-23a. The court observed that Congress had sought to "invoke the full scope of its Commerce Clause power" in enacting Section 249(a)(2), id. at 9a (citation and brackets omitted), and reasoned that "[t]aken together, the Supreme Court's decisions" establish that "if individuals are engaged in ongoing economic or commercial activity subject to congressional regulation," "then Congress may also prohibit violent crime that interferes with or affects such

individuals' ongoing economic or commercial activity," id. at 14a. The court of appeals explained that in Taylor v. United States, 136 S. Ct. 2074 (2016), this Court had upheld application of the Hobbs Act (Anti-Racketeering), 18 U.S.C. 1951(a), to an attempted robbery of drug dealers on the ground that Congress's authority to regulate the market for marijuana "compelled the conclusion that Congress may likewise regulate conduct that interferes with or affects such activities." Pet. App. 11a. The court of appeals also looked to Russell v. United States, 471 U.S. 858 (1985), which upheld application of the federal arson statute (18 U.S.C. 844(i) (1982)) to a defendant who set fire to an apartment building because "[t]he congressional power to regulate the class of activities that constitute the rental market for real estate," which included regulation of the local rental market, "includes the power to regulate individual activity within that class." Pet. App. 13a (quoting Russell, 471 U.S. at 862) (brackets in original).

The court of appeals emphasized that here, petitioner "does not dispute -- apparently for the good reason that it is beyond dispute -- that Congress enjoys the authority to regulate the underlying commercial activity Tibbs was engaged in at the time of the assault," namely, "the preparation of goods for sale and shipment across state lines." Pet. App. 14a. And it reasoned that because Congress could regulate the underlying economic activity, it could also regulate petitioner's "violent conduct"

interfering with that activity. Id. at 14a n.5. The court found petitioner's reliance on United States v. Lopez, 514 U.S. 549 (1995), which invalidated a federal ban on gun possession in a school zone, and United States v. Morrison, 529 U.S. 598 (2000), which invalidated a federal cause of action for gender-motivated violence, to be misplaced because the statutes at issue in those cases lacked jurisdictional elements requiring, on a case-by-case basis, a finding that the challenged conduct affected interstate commerce. Pet. App. 17a. And the court emphasized that Section 249(a)(2), in contrast, includes an element ensuring that "federal charges will arise only where a defendant's conduct has 'the requisite nexus with interstate commerce,'" which quells any "slippery-slope" concerns that might otherwise arise by ensuring that the statute authorizes prosecution only over conduct that "interfere[s] with ongoing commercial activity," rather than conferring "general license to punish crimes of violence motivated by discriminatory animus." Id. at 18a (citation omitted).

Judge Agee dissented. Pet. App. 23a-39a. He would have found Section 249(a)(2) unconstitutional as applied both on the theory that the jurisdictional element applied here did not expressly require a finding of interference with interstate (as opposed to intrastate) commerce, id. at 26a, and on the theory that a bias-motivated assault "is not an inherently economic activity" and thus could not be aggregated for purposes of identifying a

substantial effect on interstate commerce, id. at 23a; see id. at 34a.

5. Petitioner sought rehearing en banc, which the court of appeals denied without recorded dissent. Pet. App. 49a-53a. Although Judge Agee did not request a poll, he wrote separately to reiterate his view that the statute was unconstitutional as applied. Id. at 50a-53a.

ARGUMENT

Petitioner challenges (Pet. 8-33) the facial constitutionality of 18 U.S.C. 249(a)(2)(B)(iv)(I). This Court should deny the petition. Petitioner did not raise a facial challenge in the court of appeals, and the court accordingly did not address it. The only issue decided below, that would be properly presented here, is the constitutionality of the statute as applied to petitioner's conduct, which involved an assault in a commercial setting against a victim actively engaged in the packaging of goods for interstate shipment and sale. This case does not present an appropriate opportunity for evaluating the statute's application to the other factual scenarios raised in petitioner's brief. The court of appeals correctly rejected petitioner's as-applied challenge under this Court's precedents. Its decision does not conflict with any decision of another court of appeals, and is unlikely to have broad implications for federal power under Section 249(a)(2) or other statutes. Further review is not warranted.

1. As a threshold matter, the Court should deny the petition because this case does not afford an appropriate opportunity for resolving many of petitioner's key arguments. The question presented in the petition -- "Does 18 U.S.C. 249(a)(2)(B)(iv)(I) exceed Congress's power under the Commerce Clause?" -- asks whether the statute is facially constitutional. Pet i. Petitioner's arguments, similarly, challenge facial constitutionality. See, e.g., Pet. 10 (arguing that the statute "exceeds Congress's power under the Commerce Clause") (capitalization altered; emphasis omitted). On appeal, however, petitioner did not pursue a facial challenge, and the decision below is accordingly limited to petitioner's as-applied challenge. See Pet. App. 7a n.2. Because this Court is one "of review, not of first view," Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005), it ordinarily does not address issues that were not "pressed or passed upon below," United States v. Williams, 504 U.S. 36, 41 (1992) (citation omitted). Petitioner does not identify any reason for departing from the Court's traditional rule in this case.

The as-applied nature of petitioner's challenge, coupled with the particular factual allegations at issue here, would limit the Court's ability to address the full range of petitioner's arguments. Given that his own conduct so closely intersected with interstate commerce, see pp. 17-18, infra, petitioner necessarily relies heavily on hypothetical applications of the statute to other

defendants. See Pet. 27-29. But any challenge to the statute that depends on the theory "that it may conceivably be applied unconstitutionally to others, in other situations not before the Court," Broadrick v. Oklahoma, 413 U.S. 601, 610 (1973), would be an overbreadth challenge. This Court has observed that such arguments are "especially to be discouraged" because they "call for relaxing familiar requirements of standing, to allow a determination that the law would be unconstitutionally applied to different parties and different circumstances from those at hand." Sabri v. United States, 541 U.S. 600, 609 (2004); see also United States v. Salerno, 481 U.S. 739, 745 (1987). This case does not present an appropriate occasion for addressing the more attenuated applications of the statute that form the core of petitioner's arguments.

2. The court of appeals correctly determined that Section 249(a)(2) is constitutional as applied to petitioner's act of repeatedly punching a coworker in the face as he was in the course of packaging goods for shipment interstate.

a. In United States v. Lopez, 514 U.S. 549 (1995), this Court described "three broad categories of activity" that Congress may regulate under the Commerce Clause. Id. at 558. "First, Congress may regulate the use of the channels of interstate commerce." Ibid. "Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons

or things in interstate commerce, even though the threat may come only from intrastate activities." Ibid. "Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce." Id. at 558-559 (citation omitted).

The Court has recently explained that activities fall within the third category when they "substantially affect interstate commerce in the aggregate, even if their individual impact on interstate commerce is minimal." Taylor v. United States, 136 S. Ct. 2074, 2079 (2016). In Lopez and United States v. Morrison, 529 U.S. 598 (2000), the Court identified several "significant considerations," id. at 609, for analyzing whether particular activity qualifies: (1) whether the regulated conduct is economic in nature; (2) whether the statute contains a jurisdictional element limiting its reach to conduct that has a connection to interstate commerce; (3) whether Congress made findings regarding the effects of the regulated activity on interstate commerce in enacting the law at issue; and (4) whether the link between the regulated conduct and interstate commerce is attenuated. See id. at 610-612; Lopez, 514 U.S. at 559-568.

In Lopez and Morrison, the Court relied on these considerations to conclude that the federal legislation at issue was facially unconstitutional. Lopez invalidated the Gun Free

School Zones Act of 1990, 18 U.S.C. 922(q)(1)(A) (1994), which prohibited possessing a firearm in a school zone. 514 U.S. at 551. The Court found that the prohibited conduct "is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce." Id. at 567. And it observed that the Act "contain[ed] no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce." Id. at 561. Similarly, in Morrison, the Court invalidated the Violence Against Women Act of 1994 (VAWA), 42 U.S.C. 13981 (1994), which provided a civil cause of action for victims of gender-motivated violence. 529 U.S. at 601-602. Relying on Lopez, the Court pointed out that VAWA lacked a jurisdictional element connecting the regulated conduct to interstate commerce, id. at 613, and reasoned that Congress "may [not] regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce," id. at 616-617.

In two more recent cases, application of the same considerations led the Court to reject Commerce Clause-based arguments involving other statutes. In Gonzales v. Raich, 545 U.S. 1 (2005), the Court upheld a prohibition on the purely intrastate production and possession of marijuana. In so doing, the Court reaffirmed "Congress' power to regulate purely local activities that are part of an economic 'class of activities' that

have a substantial effect on interstate commerce." Id. at 17. Similarly, in Taylor, supra, the Court upheld a conviction under the Hobbs Act, 18 U.S.C. 1951, for the attempted robbery of two marijuana dealers. The Court observed that under Raich, the market for marijuana was, "as a matter of law," "'commerce over which the United States has jurisdiction.'" Taylor, 136 S. Ct. at 2081. And "[a]s long as Congress may regulate the purely intrastate possession and sale of illegal drugs, Congress may criminalize the theft or attempted theft of those same drugs," even if "any actual or threatened effect on commerce in a particular case is minimal." Ibid.

b. In enacting Section 249(a)(2), Congress sought to "invoke the full scope of its Commerce Clause power." Pet. App. 9a (quoting H.R. Rep. No. 86, 111th Cong., 1st Sess. 15 (2009) (House Report)) (brackets omitted). Section 249(a)(2) criminalizes "willfully caus[ing] bodily injury to any person * * * because of the [person's] actual or perceived * * * sexual orientation," in circumstances where one of several express jurisdictional requirements is met. 18 U.S.C. 249(a)(2)(A); see 18 U.S.C. 249(a)(2)(B)(i)-(iv). The jurisdictional element at issue here requires the government to prove beyond a reasonable doubt that the offense "interfere[d] with commercial or other economic activity in which the victim [was] engaged at the time of the conduct." 18 U.S.C. 249(a)(2)(B)(iv)(I).

Section 249(a)(2)(B)(iv)(I), as applied to petitioner's conduct, is a valid exercise of Congress's Commerce Clause power. Like the possession and sale of marijuana in Taylor, the conduct at issue in this case -- "the preparation of goods for sale and shipment across state lines," Pet. App. 14a -- is, "as a matter of law," "'commerce over which the United States has jurisdiction.'" Taylor, 136 S. Ct. at 2081; see United States v. Darby, 312 U.S. 100, 113 (1941) ("[T]he shipment of manufactured goods interstate" is interstate commerce.). Indeed, petitioner "does not dispute * * * that Congress enjoys the authority to regulate the underlying commercial activity Tibbs was engaged in at the time of the assault." Pet. App. 14a (citing Darby, 312 U.S. at 113). And because Congress has authority over the underlying commercial conduct, it similarly has authority over "violent crime" that directly "interferes with or affects" that "ongoing economic or commercial activity." Ibid.; see Taylor, 136 S. Ct. at 2077 ("Because Congress may regulate these intrastate activities based on their aggregate effect on interstate commerce, it follows that Congress may also regulate intrastate drug theft."). The fact pattern in this case thus falls squarely within Congress's regulatory authority.

c. Petitioner's counterarguments lack merit. Petitioner principally contends (Pet. 8) that this case is "on all fours" with Morrison. But in Morrison, the Court emphasized that VAWA

"contain[ed] no jurisdictional element establishing that the federal cause of action [wa]s in pursuance of Congress' power to regulate interstate commerce," 529 U.S. at 613, and explained that Congress may not "regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce," id. at 617 (emphasis added). Section 249(a)(2), in contrast, includes a jurisdictional element requiring that "the [g]overnment prove beyond a reasonable doubt, as an element of the offense, a nexus to interstate commerce in every prosecution." Pet. App. 10a (citation omitted); see House Report 15; see also 18 U.S.C. 249(a)(2)(B)(iv)(I). That element "ensure[s], through case-by-case inquiry, that the [conduct] in question affects interstate commerce." Lopez, 514 U.S. at 561.

Petitioner asserts (Pet. 17-18) that a jurisdictional element, standing alone, is insufficient to bring a statute within Congress's commerce power. But the court of appeals properly examined other factors set forth in Lopez and Morrison in rejecting petitioner's as-applied challenge. See, e.g., Pet. App. 9a-10a (discussing Congress's legislative findings); id. at 17a-18a (discussing the link between the assaults covered by the statute and interstate commerce). And both Lopez and Morrison highlight the inclusion of a jurisdictional element that requires an adequate connection between the regulated activity and interstate commerce as a critical factor in assessing a statute's validity. See Lopez,

514 U.S. at 561 (observing that the Gun Free School Zones Act "contains no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce") (emphasis added); Morrison, 529 U.S. at 612 ("[A] jurisdictional element may establish that the enactment is in pursuance of Congress' regulation of interstate commerce.") (emphasis added); see also Taylor, 136 S. Ct. at 2081 (same).

The sources that petitioner cites (Pet. 18) on this point generally stand for the unremarkable proposition that a jurisdictional element is insufficient where it fails adequately to tie the conduct at issue to interstate commerce. See, e.g., United States v. Rodia, 194 F.3d 465, 473 (3d Cir. 1999) ("A jurisdictional element is only sufficient to ensure a statute's constitutionality when the element either limits the regulation to interstate activity or ensures that the intrastate activity to be regulated falls within one of the three categories of congressional power."), cert. denied, 529 U.S. 1131 (2000). Petitioner asserts that the jurisdictional element here fails to establish the requisite connection with interstate commerce because it covers all "commercial or other economic activity," 18 U.S.C. 249(a)(2)(B)(iv)(I), and is not expressly "limited to activities in or affecting interstate commerce," Pet. 24-25. But the full context in which that phrase appears -- a requirement to show that

a defendant's conduct either interferes with the victim's ongoing "commercial or other economic activity" or "otherwise affects interstate or foreign commerce," 18 U.S.C. 249(a)(2)(B)(iv) (emphasis added) -- refutes petitioner's suggestion that the economic or commercial activity could have no connection at all to such commerce.

Rather, the statutory language accords with the undisputed principle that Congress can regulate "purely local activities that are part of an economic 'class of activities'" "that in the aggregate substantially affect interstate commerce." Taylor, 136 S. Ct. at 2080 (quoting Raich, 545 U.S. at 17). Concomitant to that power, Congress may also regulate conduct that directly interferes with commerce over which it exercises jurisdiction. See id. at 2080 ("[A] robber who affects or attempts to affect even the intrastate sale of marijuana grown within the State affects or attempts to affect commerce over which the United States has jurisdiction."). And petitioner's own conduct was clearly intertwined with interstate commerce -- more so than even the attempted robberies of the drug dealers in Taylor, who were merely participants in a commercial market. Here, petitioner's victim was actively "preparing packages for interstate sale and shipment" at the very moment when petitioner attacked him. Pet. App. 6a (emphasis added). It is difficult to imagine a clearer fact pattern for the application of Congress's authority to regulate

intrastate conduct that interferes with interstate commerce. See Sabri, 541 U.S. at 609 (rejecting facial challenge and noting that it is "obvious that the acts charged against [defendant] himself were well within the limits of legitimate congressional concern").

Petitioner nevertheless contends (Pet. 21) that the facts of this case fall outside Congress's commerce power because "the impact of the assault on Amazon's stream of commerce was essentially nonexistent." But even assuming that the proper focus is on Amazon, rather than the victim himself (who had to stop packing shipments and instead seek medical treatment), the Court rejected a similar argument in Taylor. The Court there upheld the Hobbs Act conviction of a defendant who robbed his victims of "jewelry, $40, [three] cell phones, and a marijuana cigarette." 136 S. Ct. at 2078. As this Court explained, "it makes no difference under our cases that any actual or threatened effect on commerce in a particular case is minimal." Id. at 2081; see also ibid. ("But in a case like this one, where the target of a robbery is a drug dealer, proof that the defendant's conduct in and of itself affected or threatened commerce is not needed.").

Finally, petitioner's argument (Pet. 16) that Section 249(a)(2) is unconstitutional because it "regulates violent conduct, not economic activity" is misconceived. As the court of appeals recognized, "[i]t is not the violent act itself, or the motivation behind that act, that triggers Congress's regulatory

authority under the Commerce Clause, but the effect of that act on interstate commerce that renders it susceptible to federal regulation." Pet. App. 21a (emphases omitted). In Taylor, for example, the Court emphasized that the "activity at issue" was not the robbery itself, but "the sale of marijuana," which was "unquestionably an economic activity." 136 S. Ct. at 2080. And the Court held that "[a]s long as Congress may regulate the purely intrastate possession and sale of illegal drugs, Congress may criminalize the theft or attempted theft of those same drugs." Id. at 2081; see Russell v. United States, 471 U.S. 858, 862 (1985) (upholding a conviction for attempted arson of an apartment building in violation of 18 U.S.C. 844(i) (1982), because it affected the "commercial market in rental properties"). Similarly here, by assaulting Tibbs as Tibbs was preparing items for interstate sale and shipment, petitioner "necessarily affect[ed] or attempt[ed] to affect commerce over which the United States has jurisdiction." Taylor, 136 S. Ct. at 2078; see Raich, 545 U.S. at 35 (Scalia, J., concurring in the judgment) (explaining that this Court has upheld prohibitions on discrimination by restaurants and hotels because the Commerce Clause enables Congress "to facilitate interstate commerce by eliminating potential obstructions" to such commerce).

3. As petitioner acknowledges (Pet. 30), no circuit conflict exists on the question presented. Although Section

249(a)(2) was enacted over a decade ago, see Pub. L. No. 111-84, Tit. XLVI, Div. E, §§ 4707(a), 4711, 123 Stat. 2838-2840, 2842, the decision below appears to have been the first to resolve an as-applied challenge to Section 249(a)(2)(B)(iv)(I). See Pet. 31; Pet. App. 11a ("Whether the [statute] may be constitutionally applied to an unarmed assault of a victim engaged in commercial activity at his place of work appears to be an issue of first impression in this Circuit or any other.").

In arguing that review is needed now, petitioner dramatically overstates the significance of the decision below. See, e.g., Pet. 27 (arguing that the court of appeals' ruling "places no limit on federal power") (emphasis omitted). The court of appeals limited its holding to this particular as-applied challenge, emphasizing that petitioner's prosecution "complied with the Commerce Clause because his assault of Tibbs interfered with ongoing commercial activity," namely, "packaging products for interstate shipment." Pet. App. 18a, 21a. The court correctly noted that its narrow holding "in no way usurps the States' authority to regulate violent crimes -- including hate crimes -- unrelated to ongoing interstate commerce." Id. at 18a. And as discussed above, this case would be an unsuitable vehicle for addressing the validity of hypothetical applications of the statute to fact patterns posited by petitioner that are far afield from the one here. See, e.g., Pet. 27-28 (asserting that the

decision below could lead to federalization of assaults on individuals who are "wearing clothes sewn overseas, or drinking a soda bottled out of state").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 2020