

No. ____ - ____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES WILLIAM HILL, III,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**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. Mr. Hill was convicted of a federal felony offense for punching a co-worker in the nose. The trial evidence showed that while the two men were working at an Amazon warehouse, Mr. Hill walked up to the victim and punched him. The victim had been packing items into boxes along an assembly line. The victim suffered some cuts and bruises and a bloody nose, and he missed the rest of his shift while receiving treatment. Mr. Hill allegedly

made statements that he hit the victim because he believed the victim to be homosexual. App. 4a.

Mr. Hill was initially charged with a state misdemeanor assault, but the Attorney General asserted a federal interest in the case. Mr. Hill was subsequently charged with violating the Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249(a)(2), an offense with a statutory maximum of ten years in prison. The indictment alleged that Mr. Hill committed the assault based on the victim's perceived sexual orientation, one of the protected categories in the HCPA. App. 5a.

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).

Mr. Hill moved to dismiss the indictment, arguing that the HCPA was unconstitutional. The district court agreed, holding that the act went beyond the limits of congressional power under the Commerce Clause of the Constitution. *United States v. Hill*, 182 F. Supp. 3d 546, 555-56 (E.D. Va. 2016). Applying the test set out in *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), the district court concluded that a purely local assault, motivated by alleged bias and not by any economic interest, did not have a substantial effect on interstate commerce. *Hill*, 182 F. Supp. 3d at 552-55.

2. 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. Judge Wynn dissented. *Id.* at 238. He contended that the Commerce Clause issue was cognizable at the pre-trial stage, and that on the merits, the HCPA was constitutional. *Id.* at 239-50.

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).

The trial evidence showed that other employees handled the work assigned to Mr. Hill and the victim during the shift when the assault happened. Amazon’s manager testified that the warehouse did not miss any deadlines as a result of the incident, and that no additional employees were required to be called in or made to work overtime. An expert witness examined Amazon’s records and concluded “with complete certainty that Amazon’s performance during that shift was no different than any other shift during” the surrounding month. App. 4a.

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).

3. 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 *Lopez* 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: 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, making Mr. Hill's petition for a writ of certiorari due by December 23, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1). 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. In the eleven-week span between September 24, the date the Fourth Circuit denied rehearing, and December 10, Mr. Hill's counsel of record has filed or will soon file nine briefs,¹ filed one rehearing petition,² and presented or will present two oral arguments.³

¹ *United States v. Kasey*, 4th Cir. No. 19-4467 (Oct. 8, 2019) (opening brief); *United States v. Steward*, 4th Cir. No. 15-4422 (Oct. 10, 2019) (supplemental reply); *United States v. Jimenez-Garcia*, 4th Cir. No. 19-4417 (Oct. 15, 2019) (opening); *United States v. Garcia*, 4th Cir. No. 19-4458 (Oct. 18, 2019) (opening); *United States v. Coston*, 4th Cir. No. 19-4242 (Oct. 25, 2019) (reply); *United States v. Rivera-Lopez*, 4th Cir. No. 18-4897 (Nov. 19, 2019) (opening); *United States v. Johnson*, No. 19-4570 (Nov. 25, 2019) (opening); *Garcia*, *supra* (Nov. 27, 2019) (reply); *Kasey*, *supra* (Dec. 6, 2019) (reply).

² *United States v. Torres*, 4th Cir. No. 18-4714 (Nov. 7, 2019).

³ *United States v. Brown*, 4th Cir. No. 18-6794 (Oct. 31, 2019); *United States v. Morgan*, 4th Cir. Nos. 19-4017, 19-4018 (Dec. 10, 2019).

These duties alone have delayed work on Mr. Hill's petition for certiorari. In addition, counsel has had other obligations, including providing substantial editing and drafting assistance to co-counsel in two other cases. Counsel will also have due in late December and early January at least three other briefs. Counsel was out of the office for three CLE training events, including one on October 28 sponsored by the Fourth Circuit at which counsel was an invited speaker. Finally, counsel will be helping coordinate moots and will sit second-chair for an en banc Fourth Circuit argument tentatively scheduled for late January.

7. Counsel does not make this extension request lightly. But this is a complex case, one 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 with effective assistance of counsel.

8. In light of counsel's briefing deadlines and other obligations, counsel requests an extension of 30 days, from December 23, 2019, to January 22, 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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