

No. 24-6428

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

JAN 22 2025

OFFICE OF THE CLERK

Marc Anthony Hill

— PETITIONER

(Your Name)

United States of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Marc Anthony Hill

(Your Name)

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Pollock, La 71467

(City, State, Zip Code)

(Phone Number)

**QUESTION(S) PRESENTED**

Whether or not a new rule announced by the Supreme Court, applies to petitioner who is currently on direct review and Certiorari, and where the lower courts on a vacate and remand enters a new amended judgment before the final deposition of the Supreme Courts Cert., and declines to recall their mandate in light of this new rule announced, is in error., which violates basic norms of Constitutional Adjudication.

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## **RELATED CASES**

United States v. Marc Hill, 4:17-cr-00007  
United States v. Hill No. 19-20251

Marc Hill v. United States, No. 23-5031

United States v. Marc Hill No. 24-20167

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	5,6,7
CONCLUSION.....	8

## INDEX TO APPENDICES

APPENDIX A      Decision of Court of Appeals

APPENDIX B      Decision of Court of Appeals Denying Rehearing

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
United States v. Barrett, 937 f.3d 126 (2nd cir. 2019)	6
Griffith v. Kentucky, 479 U.S. 314, 328 (1987)	5
United States v. Hill, No. 19-20251	6
Hill v. United States, No. 23-5031	5
Joseph v. United States, 135 S. Ct. 705, 706 (2014)	5
United States v. Lewis, 907 F3d 891, 893 (5th cir. 2018)	5
Lora v. United States, 143 S.Ct. 1713 (2023)	7
United states v. Taylor, 142 S. Ct. 2015 (June 21, 2022)	5

## STATUTES AND RULES

Fed.R.App. P. 41	7
§ 777.5	6, 7
Fed.R.Civ.P. 60(b)	5

## OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

[ ] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 11/13/2024

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 1/12/2024, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment

18 U.S.C. 1951 (a)

18 U.S.C. 1952

18 U.S.C. 924(c)(1)(a)(iii)

18 U.S.C. 924 (c)(3)

18 U.S.C. 924 (j) (1)

§ 924 (c)(1)(D)(ii)

Fifth Amendment

§ 924 (c)(1)(D)(ii)

## STATEMENT OF THE CASE

On September 27, 2018, a four count indictment against Hill, Polk, Scott and Phillips was presented, substituting the charges from Conspiracy to Interfere with Commerce by Robbery to Aiding and Abetting Hobbs Act Robbery without being submitted to and returned by the Grand Jury. Hill and Polk were charged with Aiding and Abetting Hobbs Act Robbery in violation of 1951(a) and 1952 (count one), and aiding and abetting the use of a firearm during a crime of violence causing the death of a person in violation of 18 U.S.C. 924 (c)(1)(A)(iii), (c)(3) and (j)(1)(count two). Hill, Polk, Scott, and Phillips were all charged with Attempt Hobbs Act Robbery in violation of 1951(a) (count three), and Aiding and Abetting the use of a firearm during a crime of violence in violation of 924 (c)(1)(A)(iii), (c)(3) (count four). Defendants proceeded to trial on March 18, 2019, and was found guilty on all counts. Defendants timely appealed their convictions and the court of appeals vacated and remanded the conviction as to count four and affirmed the remaining counts.

## REASONS FOR GRANTING THE PETITION

While admittedly, not all new rules of law announced by the Supreme Court in a criminal case apply on collateral review, there is no question that the decision of the Supreme Court announcing "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final"; and more so in this case wherein the Supreme Court's decision was announced while Defendant was in transition to file his writ of Certiorari. Griffith v. Kentucky, 479 U.S. 314, 328 (1987) (emphasis added); United States v. Lewis, 907 F.3d 891, 893 (5th Cir. 2018). Indeed, based on the rationale of Griffith, even if an issue has not been raised in an opening brief, this court will permit a party to file a supplemental brief if the Supreme Court "issues a decision that upsets precedent relevant to a pending case and thereby provides an appellant with a new theory or claim." Joseph v. United States, 135 S.Ct. 705, 706 (2014).

In the case herein, the Supreme Court decision in United States v. Taylor, U.S. 142 S.Ct. 2015 (June 21, 2022) was handed down prior to Defendants herein completion of his direct appeal. Were the court recalled it's mandate and vacated and remanded defendants conviction as to count four. However, the Fifth Circuit Court of Appeal and this Supreme Court failed to apply the LORA holdinds in petitioners case, which is !t A result of petitioners error !asserted in the Rule 60(B) Motion.

The Lora erro subjected petitioner to a mandatory life sentence ,this ruling has rendered petitioner's conviction and sentence unconstitutional due to the court's misapplication of imposing a consecutive term of sentence as to Count two 924(e)(1)(A)(iii),(J)(1),because subsection -(j) is not located within subsection (c).The consecutive sentence mandate in 924(c)(1)(D)(ii) does not govern 924 (j) sentences and therefore petitioner asserts that this new rule announced and clarification automatically applies to petitioner who was on direct review and case not yet final. Griffith v. Kentucky, 479 U.S. 314, 328 (1987).

At sentencing, the court concluded that it lacked discretion and therefore was bound by the guidelines to run defendant's count on and two consecutively, because 924(c)(1)(D)(ii)'s bar on concurrent sentences governs 924(j) sentences. See United States v. Hill, no. 19-20251 R.O.A. 1612,5676,PSR;R.O.A. 4750 (PSR 31.41, 101,110);R.O.R. 5844. Here, petitioner just like Lora was convicted of the federal crime of aiding and abetting a violation of 924(j)(1), which penalizes a person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, where the killing is murder. A violation of subsection (c) occurs when a person "uses or carries a firearm" during and in violation to any crime of violence or drug trafficking crime, or possess a firearm in furtherance of any such crime.

The court sentence petitioner to consecutive term of imprisonment at to count two 924 (c)(1)(A)(iii) and (j)(1), as the judgment shows no sentence was imposed as to the 924(c) using a gun during a crime of violence, which is as lesser included offense of using a gun to cause death that same crime in violation of 924(j). Indeed, when both 924(c) and 924(j) are charged based on the same conduct, the 924(c) charge is a lesser included offense of 924(j)". United States v. Barrett, 037 F.3d 125 (2nd Cir.2019). Therefore a sentence imposed under subsection (j) does not qualify, because subsection (j) is not located within subsection (c), nor does subsection (j) calls for imposing any sentence from subsection(c).

For petitioner asserts that this error on the docketing sheet made the Appeals court deny his request to Recall the Mandate in Light of LORA decision out of the Supreme Court, which was decided while petitioner was timely petitioning the U.S. Supreme Court, in which petitioner raised this claim in a supplemental brief pursuant to this new ruling announced. According to F.R.A.P.41 the mandate is stayed until disposition of the Supreme Courts Cert. (See also § 777.5)

Petitioner asserts that the District Court and Court of Appeals abused it's discretion and/or erred when it failed to reach the merits of the claims, to determine the effects it had on the entire proceedings For not this error, appellant

would have been granted the relief pursuant to LORA v. United States, 143 S.ct. 1713. There is no question that a decision of the Supreme Court announcing "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final or on Cert.or until the finality of the Cert. And more so in this case wherein the Supreme Court decision was announced prior to Petitioner's filing of his Cert. Pursuant to rule

F.R.A.P. 41. and §777.5.

Therefore ,petitioner asserts that the appeals court recalled their mandate in light of this Supreme Court new rule announced in Taylor, and applied it to petitioner, it should have done the same in this Supreme Courts new rule announced in LORA. which was pending on direct review and not yet final. At the time the new rule was Announced , with no exception for case in which the new rule represents a clear "break with the past, that is, where the new rule explicitly overrules past precedent of the Supreme Court,disapproves a practice which the Supreme Court has arguably sanctioned in prior cases, or overturns a long standard practice that lower courts have uniformly approved; "final" means a case in which a judgment of conviction has been rendered , the availability of appeal exhausted, and the time for petition for Certiorari elasped or a petition for Certiorari finally denied.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marc Anthony Hill

Marc Anthony Hill

Date: 1-14-2025

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