

May 12, 2025

Scott S. Harris, Clerk of the Court
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: Hamilton v. United States, No. 24A475

Dear Mr. Harris:

Pursuant to Supreme Court Rule 22.4, Ruel Hamilton seeks to renew his application for a stay pending the disposition of his now fully briefed petition for a writ of certiorari to Justice Jackson. The Solicitor General's Office has not advised Hamilton's counsel of its position on this application.

Hamilton was acquitted of Travel Act bribery and the government plans to retry him in less than one month—on June 2, 2025—for the same act of bribery only this time under 18 U.S.C. §666. In advance of filing a petition for certiorari objecting to the retrial on double jeopardy grounds, Hamilton sought a stay from Justice Alito on November 11, 2024, to prevent a retrial before this Court could decide Hamilton's petition. Justice Alito denied that application on December 10, 2024, without providing his explanation.¹

Six months ago, Justice Alito may not have believed a stay would be necessary because the Court would have adequate time to consider any petition that Hamilton would file before his retrial would begin, but that is less certain now. Hamilton's petition will be considered for the first time by the Court at its May 22 conference, meaning that the earliest possible decision from this Court would not be communicated until a week before trial. Any need by the Court for more time to consider the petition may result in a decision being made after the trial has begun. To avoid that result, Hamilton renews his application for a stay now.

Now that Hamilton's petition has been fully briefed, the merits of his petition are clearer too. He asks the Court to resolve a deep split among the courts of appeals concerning the weight of a defendant's burden in bringing a double jeopardy challenge under *Ashe v. Swenson*, 397 U.S. 436 (1970), which is exactly what Chief Judge Elrod's concurrence below urged this Court to do. App.15a ("Must the invoking party demonstrate this by a preponderance of the evidence? Beyond a reasonable doubt? Or by some other standard? The courts would do well to clarify this point.").

The government recognizes the divergent views of the circuits as well, explaining the Second Circuit strictly requires a defendant to establish what facts the jury found "with certainty," the Seventh Circuit asks whether a fact was proven "with assurance," and the Fourth Circuit declares that "[r]easonable doubt" about what the jury decided is resolved in

¹ On May 6, 2025, Hamilton attempted to submit a new application for a stay to Justice Alito but was informed by the Clerk's Office that because Justice Alito denied the prior application, Hamilton should instead submit a renewed application to another justice pursuant to Rule 22.4. Hamilton sought a similar stay from the district court, which denied his motion on May 1, 2025. *United States v. Hamilton*, No. 3:19-cr-00083-M, DE515 (N.D. Tex.).

favor of the government. BIO 17 (quoting *United States v. Seijo*, 537 F.2d 694, 698 (2d Cir. 1976); *United States v. Kimberlin*, 805 F.2d 210, 232 (7th Cir. 1986); *United States v. Ruhbayan*, 325 F.3d 197, 203 (4th Cir. 2003)). At the other end of the spectrum, the government recognizes that the Ninth Circuit seeks the “most rational interpretation possible” for the verdict and the First Circuit will not “bend over backwards” to help the government ferret out a plausible alternative explanation. BIO 18–19 (quoting *United States v. Carbullido*, 307 F.3d 957, 962 (9th Cir. 2002); *United States v. Fernandez*, 722 F.3d 1, 34 (1st Cir. 2013)). Somewhere in the middle, the government notes that the Sixth and Eleventh Circuits require a defendant to produce “convincing and competent evidence” as to what the jury decided. BIO 17–18 (quoting *Christian v. Wellington*, 739 F.3d 294, 299 (6th Cir. 2014); *United States v. Hogue*, 812 F.2d 1568, 1578 (11th Cir. 1987)). Adding to this uncertainty, the government advocates a new test of its own that differs from all those used by the circuits it discusses. BIO 12.

The thrust of the government’s opposition to certiorari is its claim that Hamilton’s claim would fail under any test, but Chief Judge Elrod’s concurrence disagreed, explaining that “the outcome of this appeal may have been different” if “a preponderance of the evidence” standard had been applied, which she found more consistent with the burden imposed on a defendant to secure other constitutional rights. App.16a. Feeling constrained by her court’s precedents that hold the standard not met whenever there is an alternative possible explanation for the jury’s verdict—however unlikely—Chief Judge Elrod concurred, but she lamented that this standard made Hamilton’s “burden unduly heavy” and “higher than is appropriate in this context.” App.14a–15a. In any event, this Court grants certiorari to resolve conflicts among lower courts on questions of law, which the government acknowledges is the situation here. Whether Hamilton’s claim survives under whatever standard this Court adopts is of little relevance to the Court in deciding whether to grant certiorari. Sup. Ct. R. 10(a).

Thus, the urgent need for a stay is more acute now than when Justice Alito considered this application six months ago and the need for the Court to decide the issue raised by Hamilton’s petition is now more apparent as well. And because the Double Jeopardy Clause confers a right not to be tried, its “protections would be lost if the accused were forced to ‘run the gauntlet’ a second time”—even if “his conviction ultimately reversed on double jeopardy grounds, he has still been forced to endure a trial that the Double Jeopardy Clause was designed to prohibit.” *Abney v. United States*, 431 U.S. 651, 662 (1977).

Consequently, there is a reasonable probability that the Court will grant certiorari to resolve the conflict among the lower courts on this important constitutional issue and Hamilton’s constitutional rights will be irreparably harmed if he is retried before the Court disposes of his petition. A stay is warranted.

Respectfully,

/s/ Abbe David Lowell

ABBE DAVID LOWELL

Counsel of Record

CHRISTOPHER D. MAN

cc: All counsel of record