

## Accused Church Gunman Asks Judge to Toss Case

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(CN) — Attorneys for accused Charleston, S.C., church gunman Dylann Roof are challenging the constitutionality of the federal case against him in a bid to save their client's life.

Roof is charged with 33 federal violations, including hate crimes and obstructing the practice of religion, for the June 2015 shootings at Emanuel AME in Charleston.

Authorities say Roof told a friend he wanted to start a race war. On the night of the shooting, he allegedly waited until an hour into a Bible study class before he opened fire, killing nine and wounding three others.

In a lengthy motion filed Tuesday, his attorneys say they want the case tossed "on the grounds that the statutes on which it is based exceed the authority of the federal government under the Commerce Clause and the Thirteenth Amendment, and violate the Due Process Clause of the Fifth Amendment."

According to the filing, the federal hate crimes statute, while laudable in its intent, "cannot withstand constitutional scrutiny ... because it affords the federal government virtually unchecked discretion to prosecute crimes already being punished by the states."

The motion also takes aim at what the attorneys say is the government's contention that Roof's alleged obstruction of religious exercise adversely affected interstate commerce.

"Any connection to interstate commerce that might be imagined here -- such as intrastate travel on an interstate highway to the site of the crime, or use of goods purchased in interstate commerce to commit the crime, or use of email or the internet in researching or publicizing it -- would be sufficient today to render virtually any crime federal," the motion says.

"In fact, the crimes were entirely intrastate," it continues, "Mr. Roof lived in South Carolina, all of the alleged preparation for the crime took place in South Carolina, and the crime was committed in South Carolina. The only potential links to interstate commerce alluded to in the indictment are the use of the internet and the use of a gun and ammunition that had been manufactured out-of-state. ... Courts accept such *de minimus* connections to interstate commerce when the activity being regulated is economic in nature ... The Court should not accept the *de minimus* connection here, however, when both the activity of religious exercise and its obstruction are both wholly outside the realm of commerce, and the alleged activity by the defendant was otherwise purely local in nature."

The motion was signed by Sarah Gannett, a federal public defender from Arizona who only recently joined Roof's defense team. His other attorneys are David Bruck, of the Washington and Lee School of Law, and Michael O'Connell, of Mount Pleasant, South Carolina.

Gannett emphasized that she's making an issue of the constitutional claims "because the statutes at issue form the basis of the government's request for the death penalty."

"Should the government's death notice be withdrawn at any point in the future, the defendant will withdraw this motion and plead guilty as charged to all counts in the indictment," the motion says.

Prosecutors have until July 25 to respond. Roof's federal trial is set to begin in November. State prosecutors are also pursuing the death penalty, on charges including murder, attempted murder and weapons violations. Their case is slated for January.  ([http://www.courthousenews.com/2016/07/06/ROOF\\_MOTION.pdf](http://www.courthousenews.com/2016/07/06/ROOF_MOTION.pdf))

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