No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LONNIE GREER, JR.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Whether Sixth Circuit precedent that counts Tennessee aggravated burglary as "generic burglary" for purposes of the Armed Career Criminal Act is in error given that:
    a. a mere attempt of generic burglary could result in conviction under Tennessee law.
    b. under Tennessee law, the offense can be committed with mere recklessness.

2) Whether the "different occasions" requirement under the Armed Career Criminal Act is an element for the jury to decide or can it be decided by the sentencing judge?

3) Assuming the sentencing judge can decide the issue, whether the sentencing judge can consider whatever evidence happens to be contained in certain conviction records or must limit consideration to facts that previously either the jury necessarily found or the defendant necessarily admitted?

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PRAYER

Petitioner Lonnie Greer, Jr. prays that a writ of certiorari issue to review the judgment entered by the U.S. Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's unpublished opinion in Petitioner's case is attached in the Appendix, as is the memorandum opinion of the district court granting relief pursuant to 28 U.S.C. § 2255.

JURISDICTION

The Court of Appeals entered its judgment on October 16, 2019, vacating relief granted by the district court. This petition is filed within 90 days of that judgment as required by Supreme Court Rule 13. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment of the U.S. Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a . . . trial[] by . . . jury[.]."

The Armed Career Criminal Act provides that a prior conviction qualifies as a "violent felony" if it is, inter alia, a conviction for "burglary." 18 U.S.C. § 924(e)(2)(B)(ii). This act also provides that

> [i]n the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years[.]

18 U.S.C. § 924(e)(1).

BACKGROUND

In April 2014, Lonnie Greer, Jr. ("Greer"), pleaded guilty to one count of being a convicted felon in possession of a firearm, in violation of 18 U.S.C. § 922(g) and stipulated to a sentence of 180 months in prison. A-2; A-6. Greer was sentenced as an armed career criminal based upon the belief that, under the Armed Career Criminal Act ("ACCA"), his four prior Tennessee convictions (three for aggravated burglaries and one for robbery) qualified as "violent felonies." *See* A-2. Following this Court's ruling in *Johnson v. United States*, 135 S. Ct. 2551 (2015) ("*Johnson*"), Greer filed a 28 U.S.C. § 2255. A-3. Greer's motion was granted, and he was resentenced to 120 months in prison based upon the Sixth Circuit's ruling in *United States v. Stitt*, 860 F.3d 854 (6th Cir. 2017) (en banc). *Id.*

The government appealed, arguing that following this Court's decision in *United States v. Stitt*, 139 S. Ct. 399 (2018) ("*Stitt*"), Greer's reduced sentence should be vacated and his original 180-month sentence reinstated. *See* A-2 to A-3. In response, Greer argued that Tennessee aggravated burglary does not qualify as generic burglary, and, thus, a violent felony, because it encompasses both an attempted burglary and merely reckless conduct. A panel of the Sixth Circuit did not address the merits of these arguments, ruling instead that Sixth Circuit precedent applying this Court's *Stitt* decision required holding that convictions under Tennessee's aggravated burglary statute qualify as generic burglary under the ACCA. A-3.

In addition, Greer argued that the government could not prove that his prior offenses were committed on different occasions and that a district court is precluded from considering nonelemental facts in *Shepard* documents when conducting a different-occasion analysis. A-2 to A-3. The panel ruled that, in accordance with Sixth Circuit precedent, "a sentencing court may consider non-elemental facts such as times, locations, and victims in *Shepard* documents when conducting the different-occasions analysis. . . ." A-4 (quoting *United States v. Hennessee*, 932 F.3d 437, 439 (6th Cir. 2019)).

In light of these conclusions, Greer's amended sentence was vacated, and the case remanded with instructions to reinstate the original 180-month sentence. *Id.*

ARGUMENT

I. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE SIXTH CIRCUIT HAS MADE AN IMPORTANT ERROR THAT IS NEEDLESSLY EXTENDING PRISON SENTENCES OF DEFENDANTS LIKE GREER

Greer, like many defendants, received a reduced sentence due to the combined effect of *Johnson* and the Sixth Circuit's initial ruling in *Stitt*. Now, due to the reversal of *Stitt*, these defendants are being forced to stay in prison for at least five more years. As explained below, the Sixth Circuit should have held that *Stitt* is immaterial to Greer's relief because Tennessee aggravated burglary, notwithstanding this Court's ruling on Tennessee's "habitation" requirement, fails to qualify as a violent felony due to Tennessee's broad definition of "entry."

A. Generic burglary requires an entry by the person or by an instrument being used to commit the intended felony

Common law and a majority of jurisdictions hold that an entry is made when any part of the person, such as a hand, crosses the threshold of the structure as that person is trying to commit the felony. *Commonwealth v. Cotto*, 752 N.E.2d 768, 771 (Mass. App. 2001). The issue becomes murkier, however, when only an instrument—such as a coat hanger, Molotov cocktail, or screwdriver—crosses the threshold of the structure. Generally, if that instrument is used in an effort to commit the intended felony inside the structure (e.g. a coat hanger used to snag an item), then an "entry" is made when the instrument crosses the threshold, and, thus, a burglary is committed, assuming the other elements are established. If, however, that instrument is used only to make entry (e.g., a screwdriver used to pry at the door), then no "entry" was made even when the instrument crosses the threshold. *See id.* at 771 (summarizing common-law sources); *see* also *Commonwealth v. Burke*, 467 N.E.2d 846, 849 (Mass. 1984) (quoting *Rex v. Hughes*, 1 Leach 406, 407 (1785)); *Russell v. State*, 255 S.W.2d 881, 884 (Tex. Crim. App. 1952) (adhering to common-law rule as stated in *Hughes*); *Walker v. State*, 63 Ala. 49, 51 (1879) (citing 1 Matthew Hale, *The History of the Pleas of the Crown*, 555 (1736)). Under this later example, a mere attempted burglary is committed.

As of 1986, when Congress enacted the ACCA,[1] the vast majority of states defined burglary in their respective codes as requiring an entry, without any

[1] When defining a generic burglary, courts must ascertain the majority rule as of the date of the ACCA's enactment in 1986. *See United States v. Stitt*, 139 S. Ct. 399, 405 (2018).

statutory definition of "entry." Most courts interpreting "entry" by 1986 had endorsed the common-law's instrument-for-crime rule, typically citing either the common law or one of the many treatises endorsing this approach as the black-letter rule. *See, e.g., State v. Hodges*, 575 S.W.2d 769, 772 (Mo. Ct. App. 1978); *People v. Davis*, 279 N.E.2d 179, 180 (Ill. Ct. App. 1972); *State v. Liberty*, 280 A.2d 805, 808 (Me. 1971); *State v. O'Leary*, 107 A.2d 13, 15-16 (N.J. App. Div. 1954); *Foster v. State*, 220 So.2d 406, 407 (Fla. Dist. Ct. App. 1969); *Mattox v. State*, 100 N.E. 1009 (Ind. 1913); *State v. Crawford*, 80 N.W. 193, 194 (N.D. 1899); *Walker*, 63 Ala. at 51; *People v. Tragani*, 449 N.Y.S.2d 923, 925-28 (N.Y. Sup. Ct. 1982) ("it must be assumed that the drafters . . . really envisioned . . . an adoption by the courts of common-law, common-usage, and common-sense definitions of both bodily and instrumental entry"); *see also* Nev. Rev. Stat. Ann. § 193.0145 (1985); Wash. Rev. Code § 9A.52.010(2) (1985).[2]

Unsurprisingly, the leading modern treatise on the subject—Wayne R. LaFave, *Substantive Criminal Law*—reports that the instrument-for-crime rule is the black-letter rule on burglary "entry." *Id.* § 21.1(b) (2 ed. 2003); *see Taylor v. United States*, 495 U.S. 575, 580, 593, 598 & n.3-4 (1990) (placing significant reliance on LaFave's treatise to define generic burglary). Professor LaFave explains:

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[2] Prior to 1986, three states also indicated they would follow the instrument-for-crime rule. *See State v. Sneed*, 247 S.E.2d 658, 659 (N.C. App. 1978); *Stamps v. Commonwealth*, 602 S.W.2d 172, 173 (Ky. 1980); *Sears v. State*, 713 P.2d 1218 (Alaska Ct. App. 1986). After 1986, additional states endorsed the rule while giving no suggestion that they were adopting a new approach. *See State v. Williams*, 873 P.2d 471, 473-74 (Ore. App. 1994); *State v. Faria*, 60 P.3d 333, 339 (2002) and *People v. Rhodus*, 303 P.3d 109, 113 (Colo. App. 2012); *see also* Iowa J.I. Crim. § 1300.12; and OUJI-CR § 5-18 (Oklahoma).

> If the actor . . . used some instrument which protruded into the structure, no entry occurred unless he was simultaneously using the instrument to achieve his felonious purpose. Thus there was no entry where an instrument was used to pry open the building, even though it protruded into the structure; but if the actor was also using the instrument to reach some property therein, then it constituted an entry.
>
> LaFave, *Substantive Criminal Law*, § 21.1(b) (2 ed. 2003).

B. Tennessee, like other minority jurisdictions, follows a broader "entry" rule

Despite this acceptance, a handful of states have deviated from the majority approach. By statute, four states have defined "entry" to include mere entry by any instrument. *See* 11 Del. Code § 829(c); 4 Ariz. Rev. Stat. Ann. § 13-1501(3); Tex. Penal Code Ann. § 30.02(b); Utah Code Ann. § 76-6-201(4). Two state courts had also interpreted "entry"—when it was undefined by statute—to mean any instrument, rather than an instrument in use for the intended felony.

One was an intermediate court of appeals in New Mexico that, after acknowledging the common-law and majority rule, simply announced that in its "opinion" an any-instrument rule was better. *State v. Tixier*, 551 P.2d 987, 989 (N.M. Ct. App. 1976). The other was the Tennessee Supreme Court, which issued binding language endorsing the any-instrument rule without explaining why it was doing so. *State v. Crow*, 517 S.W.2d 753, 755 (Tenn. 1974). This approach has since been reiterated by subsequent Tennessee courts. *See e.g.*, *Hall v. State*, 584 S.W.2d 819, 821 (Tenn. Crim. App. 1979) ("The 'entry' element of burglary can be accomplished without the accompaniment of any force, such as penetration of the

space within the premises by the hand or an instrument held in the hand."); *State v. Summers*, 1990 WL 98642, at *2 (Tenn. Crim. App. Oct. 10, 1990) (same); *State v. Moore*, No. C.C.A. 1, 1990 WL 8620, at *2 (Tenn. Crim. App. Feb. 7, 1990) ("The 'entry' element of burglary can be accomplished by penetration of the space within the premises by the hand or an instrument held in the hand."). Finally, in 1989, the Tennessee legislature appeared to endorse *Crow* by defining "entry" in terms indistinguishable from those of the codes in Delaware, Arizona, Texas, and Utah. *See* Tenn. Code § 39-14-402(b). More recent case law confirms Tennessee's adherence to *Crow* and the minority definition of entry. *See, e.g., State v. Johnson*, No. M2010-02664-CCA-R3-CD, 2012 WL 1648211, at *4 (Tenn. Crim. App. May 10, 2012) (citing *Crow* for the proposition that "the State need not prove that a defendant's whole body made entrance into the building; entry of a hand or an instrument is sufficient"); *State v. House*, No. W201201272CCAR3CD, 2013 WL 12185203, at *4 (Tenn. Crim. App. June 21, 2013).

C. Tennessee burglary, unlike a generic burglary, can be committed with mere recklessness

A second wrinkle in Tennessee's burglary law also places Greer's convictions outside the confines of generic burglary. The *Taylor* definition of generic burglary requires that a defendant have *intent* to commit a crime while within the building. *See* 495 U.S. at 599, 110 S. Ct. at 2158 (a generic burglary for purposes of ACCA requires basic elements of "unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime"). This view is consistent with

the general *mens rea* requirements of all the enumerated offenses found in the ACCA. *See Begay v. United States*, 553 U.S. 137, 144-47, 128 S. Ct. 1581, 1586-87, 170 L. Ed. 2d 490 (2008), *abrogated on other grounds by Johnson v. United States*, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015) (contrasting the enumerated offenses' "purposeful, 'violent,' and 'aggressive' conduct," with crimes committed "recklessly" that fail to meet this standard); *see also United States v. McMurray*, 653 F.3d 367, 374-75 (6th Cir. 2011) ("the 'use of physical force' clause of the ACCA, § 924(e)(2)(B)(i), requires more than reckless conduct").

Tennessee's burglary statute, however, provides that an individual is guilty of burglary when he, without the effective consent of the property owner, "[e]nters a building and commits or attempts to commit a felony, theft or assault[.]" Tenn. Code Ann. § 39-14-402(a)(3). This subsection does not include an intent requirement related to either the entry into the building or with respect to the commission of the underlying felony, theft, or assault. *See id.*; *State v. Snipes*, No. W2011-02161-CCA-R3-CD, 2013 WL 1557367, at *9 (Tenn. Crim. App. Apr. 12, 2013) ("burglary statute is silent regarding the required mens rea"). Moreover, Tennessee Code § 39-11-301(c) provides that "[i]f the definition of an offense within this title does not plainly dispense with a mental element, intent, knowledge or recklessness suffices to establish the culpable mental state." The applicability of this provision to § 39-14-402(a)(3) is reinforced by the Pattern Jury Instruction which specifically notes that the element of entering with "intent" is not required

for prosecution of this subsection. T.P.I.—Crim. 14.01 Burglary, 7 Tenn. Prac. Pattern Jury Instr. T.P.I.—Crim. 14.01 n.4.

D. The Sixth Circuit's decision conflicts with this Court's relevant decisions

Whether a prior conviction for Tennessee aggravated burglary qualifies as an ACCA predicate under the "categorical approach," requires courts to compare the statutory elements of the Tennessee offense with the elements of "generic" burglary. *Descamps v. United States*, 570 U.S. 254, 257 (2013). "The prior conviction qualifies as an ACCA predicate only if the statute's elements are the same as, or narrower than, those of the generic offense." *Id.* Tennessee's burglary offense does not qualify as an ACCA predicate, however, because its elements are broader than—not equivalent to or narrower than—those of the generic offense.

Congress and this Court have recognized that a completed burglary and an attempted burglary are two different crimes. Congress has even rejected an amendment to define the ACCA's "violent felony" to include attempted burglary, thereby restricting the ACCA to completed burglary. *See James v. United States*, 550 U.S. 192, 200 (2007), overruled by *Johnson v. United States*, 135 S. Ct. 2551 (2015). Accordingly, the *James* court held that a Florida attempted burglary does not qualify as a generic burglary. *Id.* at 197. While a generic burglary requires "an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime" *Taylor*, 495 U.S. at 598, Tennessee's minority approach permits conviction for what, at common law, is merely an attempted

burglary. Consequently, such convictions qualify as neither generic burglary nor ACCA predicate offenses.

In addition to the entry requirement, generic burglary, like all of the enumerated offenses of 18 U.S.C.A. § 924(e)(2)(B)(ii), requires purposeful, intentional conduct. Under Tennessee law, however, it is possible to commit a burglary by mere reckless conduct. This sweeping extension of the definition of burglary also prevents Tennessee aggravated burglary convictions from constituting ACCA predicates.

As previously noted, the Sixth Circuit panel did not address the broad nature of Tennessee burglary and its effect on Greer's sentence. Instead, it avoided this issue by simply holding that its precedent compelled it to deny relief. A-3. Because this issue is of great importance to defendants like Greer who are having years in prison needlessly added to their sentences, this Court should grant review.

II. THE COURT SHOULD GRANT CERTIORARI BECAUSE THE CIRCUIT COURTS HAVE UNIFORMLY ESTABLISHED A SENTENCING PRACTICE THAT VIOLATES THE SIXTH AMENDMENT

In a series of constitutional decisions, this Court has developed this bedrock rule: the Fifth and Sixth Amendments require any fact that increases the statutory maximum or minimum penalty for a crime to be charged in the indictment, submitted to a jury, and proven beyond a reasonable doubt. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Alleyne v. United States*, 570 U.S. 99, 111 (2013). Facts determined at sentencing cannot enhance the statutory sentencing range. *Id.* A single exception to this rule allows a sentencing court to consider "the fact of a

prior conviction," though this Court has cautioned that the exception is "narrow." *Apprendi*, 530 U.S. at 490; *Alleyne*, 570 U.S. at 111, n.1.

To fit within this exception, the features of the prior conviction that trigger the increased penalty must have been elements of the prior offense—i.e., facts that the jury had to find beyond a reasonable doubt to sustain the conviction. *Mathis v. United States*, 136 S.Ct. 2243, 2248, 2252 (2016). Accordingly, a sentencing judge cannot make findings about facts that lay behind a conviction; rather, s/he can determine only "what crime, with what elements, the defendant was convicted of." *Id.* at 2252; *see also Descamps*, 570 U.S. at 269-70 ("[T]he only facts the court can be sure the jury so found are those constituting elements of the offense—as distinct from amplifying but legally extraneous circumstances."); *Shepard v. United States*, 544 U.S. 13, 20-21, 26 (2005). In contrast, if the matters under consideration include circumstances that would let the judge "explore the manner in which the defendant committed that offense," they do not fit within the narrow *Apprendi* exception. *Mathis*, 136 S. Ct. at 2252.

In short, this Court has established a distinction between "elemental facts" and "nonelemental facts." *Descamps*, 570 U.S. at 270. The former are the facts that either the jury necessarily found or the defendant necessarily admitted to sustain the conviction; in contrast, the latter are facts that were legally extraneous to the conviction. When a federal sentencing court determines the "fact of a prior conviction," it can consider only "elemental facts"—otherwise it will run afoul of the Sixth Amendment.

The *Apprendi* doctrine allows the courts to handle such sentence-enhancing facts in only one of two ways: (1) treat the fact as an element that must be found by a jury; or, (2) treat the fact as part of "the fact of a prior conviction" and let the sentencing court find the fact as long as the court bases its finding on previously determined "elemental facts," i.e., facts that were necessarily determined to authorize the prior conviction. *Apprendi*, 530 U.S. at 490; *Shepard*, 544 U.S. at 20-21, 26; *Alleyne*, 570 U.S. at 111, n.1; *Descamps*, 570 U.S. at 269-70; *Mathis*, 136 S. Ct. at 2248, 2252. Adherence to these restrictions is crucial, lest the sentencing court make new factual determinations beyond the "fact of the prior conviction."

Prior to *Apprendi*, Congress enacted the ACCA, which triggers a longer sentence if the defendant previously "committed" three predicate offenses "on occasions different from one another." 18 U.S.C. § 924(e)(1). Had the courts foreseen *Apprendi*, they likely would have recognized that there were only two legitimate ways to handle the ACCA's committed-on-different-occasions requirement: (1) treat it as an element; or (2) treat it as part of the "fact of the prior conviction," subject to findings based only on elemental facts. Unfortunately, courts could not foresee *Apprendi*. Instead, they universally fell into one of two traps: 1) they assumed that the different-occasions requirement was not an element of the offense, but instead treated it as a sentencing factor to be found by the sentencing judge,[3] or 2) they

[3] *United States v. Anderson*, 921 F.2d 335 (1st Cir. 1990); *United States v. Mitchell*, 932 F.2d 1027 (2d Cir. 1991); *United States v. Schoolcraft*, 879 F.2d 64 (3d Cir. 1989); *United States v. Mason*, 954 F.2d 219 (4th Cir. 1992); *United States v. Herbert*, 860 F.2d 620 (5th Cir. 1988); *United States v. Hayes*, 951 F.2d 707 (6th Cir. 1991); *United States v. Schieman*, 894 F.2d 909 (7th Cir. 1990); *United States v. Rush*, 840 F.2d 580 (8th Cir. 1988); *United States v. Wicks*, 833 F.2d 192 (9th Cir. 1987);

directed sentencing judges to apply a test that usually turned on an analysis of nonelemental facts, viz., the crime's time, place, and victim.[4]

Surprisingly, even after *Apprendi*, courts declined to reverse course; instead, they chose to hold explicitly that the different-occasions requirement is not an element of the offense. *United States v. Burgin*, 388 F.3d 177, 185-86 (6th Cir. 2004); *United States v. Santiago*, 268 F.3d 151, 157 (2d Cir. 2001); *United States v. Morris*, 293 F.3d 1010, 1012 (7th Cir. 2002); *United States v. Campbell*, 270 F.3d 702, 708 (8th Cir. 2001).

As the *Apprendi* doctrine developed, however, this Court has made clear that when a sentencing court is acting pursuant to the prior-conviction exception to *Apprendi*, it can only consider elemental facts inhering to that prior conviction. *Shepard*, 544 U.S. at 20-21, 26; *Descamps*, 570 U.S. at 269-70; *Mathis*, 136 S.Ct. at 2248, 2252. Moreover, this Court's cases indicate that those elemental facts are typically found in certain documents (e.g., indictment, jury instructions, plea agreement, plea colloquy, and judgment) which came to be known as *Shepard* documents. *Id.*

In response, the Courts of Appeals have devised an unprincipled accommodation with the *Apprendi* doctrine. Like the Sixth Circuit in the case at

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United States v. Bolton, 905 F.2d 319 (10th Cir. 1990); *United States v. Greene*, 810 F.2d 999 (11th Cir. 1986).

[4] *United States v. Riddle*, 47 F.3d 460, 462 (1st Cir. 1995); *United States v. Rideout*, 3 F.3d 32, 35 (2d Cir. 1993); *United States v. Schoolcraft*, 879 F.2d 64, 73 (3d Cir. 1989); *United States v. Letterlough*, 63 F.3d 332, 335 (4th Cir. 1995); *United States v. Washington*, 898 F.2d 439, 441-42 (5th Cir. 1990); *United States v. Brady*, 988 F.2d 664, 670 (6th Cir. 1993) (en banc); *United States v. Schieman*, 894 F.2d 909 (7th Cir. 1990); *United States v. Hammell*, 3 F.3d 1187, 1191 (8th Cir. 1993); *United States v. Wicks*, 833 F.2d 192, 193 (9th Cir. 1987); *United States v. Tisdale*, 921 F.2d 1095, 1099 (10th Cir. 1990); *United States v. Pope*, 132 F.3d 684, 692 (11th Cir. 1998).

bar, *see* A-3 to A-4, the Courts of Appeals have decided that a sentencing judge is somehow limited to *Shepard* documents, yet not limited to *Shepard* evidence.[5] Stated differently, they have decided that the sentencing judge can consider whatever nonelemental facts happen to be contained in *Shepard* documents. In so doing, they ignore that the entire point of *Shepard* and its progeny is to limit the sentencing court's consideration to a certain type of evidence, i.e. the evidence of elemental facts.

Although this approach is both unprincipled and unconstitutional, the Circuits remain entrenched in their position by apparent inertia. The Courts of Appeals have painted themselves into a corner by holding that the different-occasions requirement must be treated not as an element but rather as a sentencing factor for the judge to decide. As noted by Judge Stras, however,

> [s]ometimes courts just continue along the same well-trodden path even in the face of clear signs to turn around. We have missed more than a few bread crumbs leading away. The Supreme Court has all but announced that an expansive view of the prior-conviction exception is inconsistent with the Sixth Amendment.

United States v. Perry, 908 F.3d 1126, 1135 (8th Cir. 2018) (Stras, J. concurring), *cert. denied,* 140 S. Ct. 90, 205 L. Ed. 2d 83 (2019). It has become apparent that this Court "all but announcing" the inconsistency between the Sixth Amendment and the Circuits' expansive view of the prior conviction exception is simply insufficient. Accordingly, the Petitioner urges this Court to grant certiorari

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[5] *United States v. Bordeaux*, 886 F.3d 189, 196 (2d Cir. 2018); *United States v. Span*, 789 F.3d 320, 326 (4th Cir. 2015); *Kirkland v. United States*, 687 F.3d 878, 883 (7th Cir. 2012); *United States v. Sneed*, 600 F.3d 1326, 1333 (11th Cir. 2010); *United States v. Thomas*, 572 F.3d 945, 950 (D.C. Cir. 2009); *United States v. Fuller*, 453 F.3d 274 (5th Cir. 2006); *United States v. Taylor*, 413 F.3d 1146, 1157-58 (10th Cir. 2005).

and to determine whether the different-occasions requirement must be treated as an element of the offense or instead must be determined only by reference to elemental facts.

CONCLUSION

For the foregoing reasons, Petitioner Lonnie Greer, Jr. respectfully prays that this Court grant certiorari to review the judgment of the Sixth Circuit.

January 10, 2020

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No._____

LONNIE GREER, Jr.,
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Respondent.

AFFIDAVIT

On this 10th day of January, 2020, I, Anthony G. Lantagne, hereby certify that this Petition for Writ of Certiorari was sent this same day via USPS Certified Mail to the Supreme Court of the United States. I further certify that I have served this same date the required copies via USPS First Class Mail and email to the counsel of record listed below:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on this 10th day of January, 2019.

KEIONA DEANDRA REDD NOTARY PUBLIC REG # 7830761 MY COMMISSION EXPIRES 3/31/2023 COMMONWEALTH OF VIRGINIA

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COMMONWEALTH OF VIRGINIA)
CITY OF RICHMOND) to-wit:

Anthony G. Lantagne appeared before me this 10th day of December, 2019, and attested that the foregoing affidavit is true and exact to the best of his knowledge and belief.

Keiona Redd