

In The Supreme Court of the United States

JOSHUA RESHI DUDLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit**

SUPPLEMENTAL BRIEF FOR PETITIONER

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TABLE OF CONTENTS

Table of Authorities	ii
Argument	1
Conclusion	3

TABLE OF AUTHORITIES

Federal Cases	Page(s)
<i>Almendarez-Torres v. United States</i> , 523 U.S. 224 (1998)	2
<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000)	2
<i>Wooden v. United States</i> , No. 20-5279, 2022 WL 660610 (U.S. Mar. 7, 2022)	1-3
United States Code	Page(s)
18 U.S.C. § 924(e).....	1
Court Document	Page(s)
Brief for the United States, <i>Wooden v. United States</i> , No. 20-5279, 2021 WL 2665551	3

ARGUMENT

The Court’s recent decision in *Wooden v. United States*, No. 20-5279, 2022 WL 660610 (U.S. Mar. 7, 2022), further supports granting the petition for a writ of certiorari. In *Wooden*, the Court for the first time interpreted the meaning of the “occasions” clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), holding that the word “occasion” refers to a “single criminal episode.” *Wooden*, 2022 WL 660610, at *2. To determine whether a defendant’s prior offenses arose from different “occasions,” the Court instructed courts to conduct a “multi-factored” inquiry of the time, location, character, and relationship of the offenses. *Id.* at *6.

Behind this inquiry lurks the issue of “whether the Sixth Amendment requires that a jury, rather than a judge, resolve whether prior crimes occurred on a single occasion.” *Id.* at *4 n.3 (noting that two *amici curiae* briefed this issue). The Court did not address this issue because Mr. Wooden had not raised it. *Id.* Yet, as Justice Gorsuch recognized, “there is little doubt [the Court] will have to do so soon,” as a growing number of judges are raising it. *Id.* at *19 n.7 (Gorsuch, J., concurring in the judgment) (citing *United States v. Dudley*, 5 F.4th 1249, 1273–78 (11th Cir. 2021) (Newsom, J., concurring in part and dissenting in part); *United States v. Perry*, 908 F.3d 1126, 1134–36 (8th Cir. 2018) (Stras, J., concurring); *United States v. Thompson*, 421 F.3d 278, 287–95 (4th Cir. 2005) (Wilkins, C.J., dissenting)).

Unlike Mr. Wooden, Mr. Dudley has squarely raised this constitutional question throughout this case. At his sentencing, Mr. Dudley objected to the district court’s factfinding about the occasions of his prior offenses, and his 215-month

sentence necessarily relied on that factfinding. In a 2-1 decision, the Eleventh Circuit then affirmed the sentence after scrutinizing a transcript of a prior state proceeding and concluding that Mr. Dudley “implicitly agreed with the factual proffer [from the state prosecutor] such that the district court could rely on the [prosecutor’s] proffered dates of Dudley’s prior Alabama assaults to confirm that the predicate offenses were committed on different occasions from one another.” Pet. App. 22a-23a. Unlike the clear and undisputed fact pattern of *Wooden*, Mr. Dudley’s case presents a situation in which individual judges are now tasked with “assessing the relevant circumstances” of prior offenses before imposing one of the most severe punishments in federal law, and his petition squarely raises the Sixth Amendment concerns with this practice. *Wooden*, 2022 WL 660610, at *6.

The “multi-factored” inquiry outlined in *Wooden* underscores the Sixth Amendment hazards of leaving the inquiry to judges. In opposing the instant petition, the government has argued that those constitutional concerns are nonexistent because identification of an offense’s occasion is woven into “the fact of a prior conviction,” *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), which sentencing courts may identify under *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See U.S. Br. in Opp’n at 7, *Walker v. United States*, 141 S. Ct. 1084 (2021) (No. 20-5578)¹ (“[W]hether two offenses occurred on separate occasions ‘is not a fact which is different in kind from the types of facts already left to the sentencing judge by

¹ The government’s memorandum in opposition to Mr. Dudley’s petition incorporates its *Walker* brief in opposition. U.S. Mem. at 2.

Almendarez-Torres,’ such as the fact that ‘the defendant being sentenced is the same defendant who previously was convicted of those prior offenses.’” (quoting *United States v. Santiago*, 268 F.3d 151, 158 (2d Cir. 2001))). Mr. Dudley rebutted that claim in reply, but by its own admission the government’s position is now even weaker. In its merits brief in *Wooden*, the government acknowledged that a Sixth Amendment claim “would potentially become more viable if this Court” interpreted the occasions clause as requiring an inquiry into a prior offense’s circumstances. Brief for Respondent at 47, *Wooden*, 2022 WL 660610; *see also* Oral Argument tr. at 41, *Wooden*, 2022 WL 660610 (government counsel acknowledging that Mr. Wooden’s interpretation of the occasions clause would “exacerbate” Sixth Amendment concerns).

Wooden is an important first step toward ensuring that the ACCA’s occasions clause is interpreted uniformly. But the clause also must be applied constitutionally, and in *Wooden* the Court had no opportunity to address the constitutional issues. The decision does, however, demonstrate that those issues are substantial and worthy of this Court’s review. The instant petition squarely presents those constitutional issues, and this case is an ideal vehicle for this Court to resolve them.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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