

No. ___-_____

IN THE SUPREME COURT OF THE UNITED STATES

RICKIE MARKIECE ATKINSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and
Circuit Justice for the Fourth Circuit:

Under 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30 of this Court, petitioner
Ricky Markiece Atkinson respectfully requests a 60-day extension of time, up to and
including February 23, 2023, in which to file a petition for a writ of certiorari in this
Court. The Fourth Circuit entered final judgment against Mr. Atkinson on September
26, 2022. His time to file a petition for a writ of certiorari in this Court expires on
December 25, 2022. Mr. Atkinson is filing this application more than 10 days before

that date. A copy of the Fourth Circuit’s unpublished opinion in this case is attached to this application as Exhibit 1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Mr. Atkinson requests this extension for these reasons:

1. This petition will involve a challenge to Mr. Atkinson’s sentence under the Armed Career Criminal Act (18 U.S.C. § 924(e)) after his guilty plea to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g).
2. Recently, this Court addressed a critical provision of that Act—the requirement that a defendant have committed predicate crimes “on occasions different from one another.” *Wooden v. United States*, 142 S. Ct. 1063 (2022) (discussing 18 U.S.C. § 924(e)(1)). This Court held that the inquiry is “multi-factored in nature” and that “a range of circumstances may be relevant to identifying episodes of criminal activity.” *Id.* at 1070-1071. In so holding, this Court declined to address “whether the Sixth Amendment requires that a jury, rather than a judge, resolve whether prior crimes occurred on a single occasion.” *Id.* at 1068 n.3; *see also id.* at 1087 n.7 (Gorsuch, J., concurring in the judgment).
3. The Solicitor General recently stated the Government’s position that a jury must find, or a defendant must admit, that a defendant’s Armed Career Criminal Act predicates were committed on occasions different from one another. *See* Notice of Supplemental Authority, *United States v. Rico Brown*, Fourth Cir. No. 21-4253 (docketed July 26, 2022). Because Mr. Atkinson’s indictment did not allege that his purported predicates were committed on

occasions different from one another, he never made such an admission as part of his guilty plea. An extension of time will help ensure that the petition effectively presents this important issue in addition to the other issues that Mr. Atkinson intends to raise.

4. Further, undersigned counsel only recently assumed responsibility for Mr. Atkinson's petition, after agreeing to cover this case while Mr. Atkinson's primary counsel is out of the office on maternity leave. *See* Appearance of Counsel, Fourth Circuit ECF-88 (Nov. 15, 2022).
5. In addition, along with her general workload, undersigned counsel will be appearing for two oral arguments before the Fourth Circuit in December.
6. For these reasons, Mr. Atkinson requests a 60-day extension.

Thus, Mr. Atkinson respectfully requests that an order be entered extending the time to petition for certiorari up to and including February 23, 2023.

Respectfully submitted today, December 2, 2022.

G. Alan DuBois
FEDERAL PUBLIC DEFENDER

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