

No. \_\_\_-\_\_\_\_\_

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CARL RAY MCNEIL, JR.

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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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

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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  
Carl Ray McNeil, Jr. respectfully requests a 60-day extension of time, up to and  
including Friday, February 16, 2024, in which to file a petition for a writ of certiorari  
in this Court. The Fourth Circuit entered final judgment against Mr. McNeil on  
September 18, 2023. The time to file a petition for certiorari in this Court currently  
expires on December 18, 2023. This application is being filed more than 10 days  
before that date. A copy of the Fourth Circuit's published opinion in this case is  
attached as Exhibit 1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

This case presents a recurring issue of great importance involving the Armed Career Criminal Act (ACCA): whether the ACCA’s different-occasions element must be found by a jury rather than a sentencing judge. Recently, on November 20, 2023, this Court granted a petition for a writ of certiorari and agreed to hear oral argument on this issue in *Erlinger v. United States*, No. 23-370. The briefs in *Erlinger* will feature significantly in the petition for a writ of certiorari in this case. The same question about ACCA’s different-occasions element is at the heart of the Fourth Circuit’s opinion below.

Counsel requests this extension for two reasons. First, the question presented is critically important to the everyday operations of the federal criminal justice system. In another recent case in the Fourth Circuit addressing this issue, the en banc court declined review, however, most of the Court’s judges signaled agreement with the parties’ constitutional argument while urging this Court to grant review. *See United States v. Brown*, 2023 WL 5089680, at \*1 (4 Cir. Aug 9, 2023) (Heytens, J., joined by six additional judges) (“I hope the Supreme Court will step in to illuminate the path soon.”); *id.* at \*2 (Niemeyer, J., joined by Senior Judge Floyd) (“urging the Supreme Court to give the courts of appeals guidance in this important matter”); *id.* at \*3 (Wynn, J., joined by three additional judges) (“agree[ing] that the Supreme Court should take up the key question in this case”).

Second, counsel seeks an extension to allow for adequate time to research and draft a petition presenting this complicated issue of constitutional significance, while simultaneously balancing a currently heavy, court-appointed caseload. In addition to this case, counsel has a deadline in pending Fourth Circuit in *United States v. Hutchinson*, No. 23-4282 (reply brief due December 11, 2023); is preparing for a sentencing hearing, following a federal criminal jury trial, in the Eastern District of North Carolina set for December 14, 2023 in *United States v. Valenzuela*, No. 5:20-cr-12-M-1; and is preparing to defend a client in a state court first-degree murder jury trial in the Johnston County Superior Court in Smithfield, North Carolina on January 18, 2024 in *State v. Jenkins*, No. 16-CRS-50403

In addition, counsel was appointed to defend a client in a state court capital jury trial that lasted approximately one month (from the beginning of October into November) this fall in *State v. Buckman*, No. 20-CRS-19-32, in the Dare County Superior Court in Manteo, North Carolina. Undersigned counsel is also trial counsel in numerous cases before the Eastern District of North Carolina, as well as state court, and has had to balance working from home regularly due to having two children who are both under 3 years old.

For these reasons, counsel respectfully requests that an order be entered extending the time to petition for certiorari up to and including February 16, 2024.

Respectfully submitted,

Tarlton Law PLLC

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December 7, 2023

## **Exhibit 1**

*United States v. McNeil*, No. 22-4308 (4th Cir. 2023) (unpublished)