

24-6306 **ORIGINALE**  
No. \_\_\_\_\_

In The  
Supreme Court of the United States

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SUPREME COURT, U.S.

Willems Calixte, Jr.  
Petitioner,

v.

United States of America,  
Respondent.

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

**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

In light of Erlinger v. United States, 144 S.Ct. 1840 (2024), was Petitioner Calixte properly sentenced as an armed career criminal where the district court (not a jury) relied on Shepard approved documents to determine to whether Petitioner's prior robbery convictions occurred on separate occasions?

## RELATED PROCEEDINGS

This case arises from these proceedings:

United States District Court (S.D. Fla.):

United States v. Calixte, 0:20-cr-60153-WPD (S.D. Fla. 2020)

United States Court of Appeals (11<sup>th</sup> Cir.)

United States v. Calixte, No. 21-13578, 2024 WL 304361 (11<sup>th</sup> Cir. 2024)

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### Appendix B: Denial of Petition for Rehearing En Banc

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1. Shepard v. United States, 544 U.S. 13, 125 S.Ct. 1254, 161 L.Ed.2d 205 (2005).

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Willems Calixte Jr. respectfully petitions for a writ of to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

### OPINION BELOW

The Opinion of the United States Court of Appeals for the Eleventh Circuit affirming Calixte's sentence is provided in the Petition Appendix (Pet. App).

### JURISDICTION

The opinion of the United States Court of Appeals for the Eleventh Circuit affirming Calixte's sentence was announced on June 18, 2024 and is attached hereto as Appendix A. Calixte's petition for rehearing en banc was denied August 14, 2024. The order denying rehearing is attached hereto as Appendix B. On November 25, 2024, this Court extended the time in which to file a petition for writ of certiorari through January 14, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

### RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution of (U.S. Const. Amend. V) provides:

No persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ... nor be deprived of life, liberty, or property, without due process of law.

The Sixth Amendment (U.S. Const. Amend. VI) provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ... and to be informed

of the nature and cause of the accusation....

Title 18, United States Code, § 922(g)(1) provides in relevant part:

It shall be unlawful for any person ... who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year ... to ... possess in or affecting commerce[] any firearm or ammunition.

Title 18, United States Code, § 924(a)(2)(2018) also provides:

whoever knowingly violates subsection ... (g) ... of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

The Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), provides in relevant part:

(1) In 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, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

## STATEMENT OF THE CASE

This case presents a question on which this Court has already granted certiorari and remanded cases from the Eleventh Circuit for further proceedings in light of Erlinger. See Hameen v. United States, 144 S.Ct. 2712 (July 2, 2024), McCall v. United States, 144 S.Ct. 2705 (Aug. 5, 2024), Bryant v. United States, Case No. 23-7345 (Oct. 7, 2024), Hood v. United States, Case No. 23-7504 (Oct. 7, 2024).

Willems Calixte, Jr. was indicted by a grand jury on December 18, 2020, on One Count: (1) possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). (Doc. 13). The indictment did not refer to the Armed Career Criminal Act (“ACCA”), which provides for an enhanced set of penalties- a mandatory minimum of 15 years and a maximum of life in prison- if the defendant has three prior convictions for a “violent felony” or a “serious drug offense” that were “committed on occasions different from one another.” 18 U.S.C. § 924(e). Neither did the indictment § 924(e), nor allege any prior “violent felony” convictions or that any such convictions were based on offenses committed on different occasions. Id.

On July 2, 2021, Calixte pled guilty to the single 922(g) count, pursuant to a plea agreement(Docs. 44, 46-48; Doc. 82). The plea agreement set out that Calixte’s statutory penalties without the ACCA were 0-10 years, and that if he was found to qualify under ACCA, that his statutory penalties would be 15 years – life imprisonment. (Doc. 48: 3-4) Calixte specifically refrained from admitting to any specific criminal history or criminal liability under the aggravated ACCA offense. (Id.) At Calixte’s plea hearing, the district court set out alternative § 922(g) and 924(e) penalties, and stated that it would select which penalty applied at sentencing. (Doc. 82: 13-15).

Subsequently, the Presentence Investigation Report (“PSR”) found that Calixte’s guideline range for a simple § 922(g)(1) conviction was 100-125 months. (Docs.

45,49,52, PSR ¶ 22, 47, 49). The PSR also recommended that Calixte be sentenced under ACCA based on three prior convictions: (i) Florida robbery, allegedly committed on July 28, 2001 (which Calixte was convicted on August 24, 2003)(Case No. 01-14781CF10A); (ii) Florida aggravated assault, allegedly committed on August 1, 2001 (which Calixte was convicted on June 18, 2004)(Case No. 01-16585CF10A); (iii) Florida aggravated assault, allegedly committed on July 28, 2001 (which Calixte convicted on October 2, 2001)(Case No. 01-17048CF10A)

Under the ACCA, Calixte's guideline range was 180-210 months. (Docs. 45, 49, 52 PSR ¶ 23, 26, 50). No objections to the PSR were filed by either party. However, in a letter dated September 2, 2021, Calixte wrote to the court objecting to Florida case: 01-16585CF10A and 01-17048CF10A, as "invalid predicate offenses under the ACCA", and he objected to the PSR's "factual findings / or elements of the crimes" and the PSR's reliance on Shepard and non-Shepard documents for those cases. (Doc. 57)

On September 9, 2021, at sentencing, the government did not present any evidence or final judgments of the alleged ACCA predicates. (Doc. 83) Nevertheless, the district court determined Calixte was an armed career criminal and sentenced him to 180 months based on the mandatory minimum penalty under ACCA. (Doc.83: 9). The judgment itself does not reference 18 U.S.C. § 924(e), but only states that, "The defendant is adjudicated guilty of these offenses: ... 18 U.S.C. 922(g)(1) Possession Of A Firearm and Ammunition By A Convicted Felon." (Doc. 54).

On appeal to the Eleventh Circuit, Calixte challenged the validity of his ACCA sentence. See App. Doc.31<sup>2</sup> He argued that his Florida conviction for aggravated assault lacked the requisite mens rea to qualify as an ACCA violent felony. (Id.) On June 18, 2024, the Eleventh Circuit affirmed Calixte's ACCA sentence. United States v. Calixte, 2024 WL 304361, 1 (11<sup>th</sup> Cir. 2024).

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2. Calixte cites the appellate docket entries in No. 21-13578 (11<sup>th</sup> Cir.)

Three days later, this Court issued its decision in Erlinger v. United States, 144 S.Ct. 1840 (2024). On August 14, 2024, Calixte requested for rehearing en banc based on the Erlinger decision, which was denied. See App. Docs. 99,104.

### REASON FOR GRANTING THE PETITION

The Eleventh Circuit's holding that judge, who relied on Shepard-approved documents, can find the fact that prior offenses were committed on separate occasions is inconsistent with the Supreme Court's recent opinion in Erlinger v. United States, 144 S.Ct. 1840 (2024).

In Erlinger, the government had charged Erlinger under § 922(g), which carries a sentence between 0-10 years. Erlinger, 144 S.Ct. At 1846-47. Erlinger was also charged with 924(e) for committing four prior burglaries. Id. The § 924(e) increased Erlinger's sentence to a minimum of 15 years and a maximum of life. Erlinger objected to the use of his prior burglaries as four separate convictions to trigger the § 924(e) enhancement, because the burglaries had not occurred on four separate occasions but during a single criminal episode. Id. Erlinger had also argued that under the Fifth and Sixth Amendments, he was entitled to have a jury make the determination as to whether he committed the four burglaries on separate occasions. Id. The district court rejected Erlinger's argument. Instead, the district court found for itself that Erlinger committed the burglaries on different occasions, and sentenced Erlinger to 15 years. Id.

This Court agreed with Erlinger's argument, holding that:

“Judges may not assume the jury’s factfinding function for themselves, let alone purport to perform it using a mere preponderance-of-the-evidence standard.”

Erlinger, 144 S.Ct. at 1852.

“Presented with evidence about the times, locations, purposes, and character of [the burglaries], a jury might have concluded that some

or all occurred on different occasions. Or it might not have do so. All we can say for certain is that the sentencing court erred in taking that decision from a jury of Mr. Erlinger's peers."

Erlinger, 144 S.Ct. at 1852.

The Court also held that a sentencing judge can consult Shepard documents to determine if a defendant has prior convictions, but not determine therefrom whether those prior convictions resulted from acts committed on separate occasions:

"To conduct the narrow inquiry Almendarez-Torres<sup>3</sup> authorizes, a court may need to know the jurisdiction in which the defendant's crime occurred and its date in order to ascertain what legal elements the government had to prove to secure a conviction in that place at that time. And to answer those questions, a sentencing court may sometimes consult a restricted set of materials, often called Shepard documents, that include judicial records, plea agreements, and colloquies between a judge and the defendant."

.....

"None of that, however, means that a court may use Shepard documents or any other materials for any other purpose. To ensure compliance with the Fifth and Sixth Amendments, a sentencing judge may use the information he gleans from Shepard documents for the limited function of determining the fact of a prior conviction and the then-existing elements of that offense ... No more is allowed .... In particular, a judge may not use information in Shepard documents to decide what the defendant ... actually did, or the means or manner in which he committed his offense in order to increase the punishment to which he might be exposed."

Erlinger, 144 S.Ct. At 1854-1855.

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3. Almendarez-Torres v. United States, 525 U.S. 224, 118 S.Ct. 1219, 140 L.Ed. 350 (1998).

None of Erlinger's constitutional principles were enforced in Calixte's case. First, ACCA was not alleged in Calixte's indictment. (Doc. 13) It did not mention the statute 18 U.S.C. 924(e), nor did it track the language of § 924(e). In addition, it did not set out allegations of possible ACCA predicates, much less that any such predicates were committed on different occasions.

Second, Calixte reluctantly pled guilty to the § 922(g), and never admitted to criminal liability under § 924(e) or to any specific criminal predicates or their facts. (Docs. 50) Instead, Calixte wrote a letter to the district court objecting to the use of his criminal history for ACCA purposes. (Doc. 57)

Third, there was no jury trial that found beyond a reasonable doubt that any alleged predicate offenses constituted different occasions. Instead, at Calixte's sentencing, the district court relying on non-Sherpard-documents, implicitly made the different occasions finding under a perponderance-of-the evidence standard by crediting unreliable hearsay in the PSR. The district court's finding clearly violated Erlinger's principles.

Finally, Calixte unsuccessfully motioned the district court to re-sentence him without the § 924(e) enhancement. (Doc. 96) Calixte also unsuccessfully challenged his § 924(e) enhancement on appeal, in light of Erlinger. See App. Docs 99,104.

## CONCLUSION

For the forgoing reasons, Petitioner Calixte respectfully urges this to grant writ of certiorari, vacate the judgment of the Eleventh Circuit, and remand the case for further proceedings in light of Erlinger.

Respectfully submitted on December 30, 2024.



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