No. 24-6396

IN THE
SUPREME COURT OF THE UNITED STATES

RYAN PERRIN,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

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SUPPLEMENTAL BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

I. When applying the categorical approach to determine whether a prior state conviction qualifies as a predicate for the Armed Career Criminal Act (ACCA) enhancement, should courts consult authoritative state court decisions pre-dating the defendant's prior conviction (as several circuits hold), or only the most recent state court decision, even if that decision changes the conduct necessary to satisfy the offense elements (as the Eleventh Circuit holds)?[1]

II. In *Erlinger v. United States*, 602 U.S. 821 (2024), this Court held that the Fifth and Sixth Amendments require the government to prove ACCA's complex different-occasions requirement to a jury beyond a reasonable doubt. Is *Erlinger* error structural?

III. *Erlinger* also explained that sentencing courts cannot use information from *Shepard* documents to decide if a defendant committed his prior offenses on different occasions. Can appellate courts rely on that same prohibited information to affirm an ACCA sentence imposed in violation of *Erlinger*?

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[1] This question is also presented in *Harris v. United States*, No. 24-5776.

RELATED PROCEEDINGS

United States District Court (M.D. Fla.)

United States v. Perrin, Case No. 8:18-cr-480

United States Court of Appeals (11th Cir.)

United States v. Perrin, No. 20-12558

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SUPPLEMENTAL BRIEF FOR PETITIONER

Under Supreme Court Rule 15.8, Petitioner Ryan Perrin files this supplemental brief to highlight two developments since filing his petition for a writ of certiorari. These developments directly impact the second and third issues in his petition regarding *Erlinger v. United States*, 602 U.S. 821 (2024).

1. First, the Sixth Circuit recently denied the petition for rehearing en banc in *United States v. Campbell*, 122 F.4th 624 (6th Cir. 2024). *See Campbell*, ECF No. 86 (6th Cir. No. 22-5567) (Feb. 19, 2025). This denial confirms that the circuit courts are unwilling to re-examine their flawed conclusions about the constitutional error identified in *Erlinger*. In denying review, the Sixth Circuit refused to correct its positions that (1) *Erlinger* error is amenable to harmless-error review, and (2) circuit courts can affirm Armed Career Criminal Act sentences based on *Shepard*[2] documents—despite *Erlinger* making clear that they are unreliable and unsuitable for the occasions inquiry. *See* Pet. for Writ of Cert. at 27, 30.

[2] *Shepard v. United States*, 544 U.S. 13 (2005).

The circuit courts have made their stance clear. Waiting for further percolation will only leave individuals like Mr. Perrin trapped under unconstitutional 15-year mandatory minimums. This Court should step in now.

2. Second, the Sixth Circuit issued a divided decision in *United States v. Cogdill*, --- F.4th ----, 2025 WL 670455 (6th Cir. Mar. 3, 2025). Over Judge Clay's objection, the majority applied harmless-error review to an *Erlinger* error. 2025 WL 670455, at *2. In doing so, the majority did not dispute Judge Clay's explanation as to why *Erlinger* error is structural. Instead, it relied on *Campbell* and the prior panel precedent rule. *See id.* ("Regardless of how we might have applied *Erlinger* were we writing on a blank slate, *Campbell* is binding precedent and now controls.").

The majority then used "post-plea documents in the record—specifically the PSR and *Shepard* documents [the government] filed—"to conduct harmless-error review. *Id.* at *4. Those documents included scant information about the prior offenses, but they did allege that two were Tennessee methamphetamine offenses allegedly committed about three months apart. *Id.* Despite this, the Sixth Circuit concluded that such a

gap in time was not conclusive and that, without additional evidence, the government had failed to prove harmlessness beyond a reasonable doubt. *Id.* at *5–6.

In his dissent, Judge Clay carefully analyzed this Court's precedent on constitutional errors subject to harmless-error analysis and those that "defy analysis by 'harmless-error' standards." *Id.* at *9 (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)). "Against this backdrop," Judge Clay continued, "a plain reading of *Erlinger* leads to the conclusion that a judge-made occasions inquiry which exposes the defendant to ACCA's mandatory minimum sentence constitutes structural error." *Id.*; *see id.* at 9–12 (explaining why *Erlinger* error is structural).[3]

Judge Clay then explained that, even if *Erlinger* errors were amenable to harmless-error review, circuit courts "cannot hypothesize about what an imaginary jury, if impaneled, would have found based on the evidence produced at sentencing." *Id.* at *13. Doing so would "be in direct contravention of *Erlinger*'s holding and reasoning, not to mention other . . . precedent" of this Court. *Id.*

[3] Judge Clay explained that, in reaching the opposite conclusion, the Sixth Circuit's decision in *Campbell* had mirrored the *dissent* in *Erlinger*, rather than the majority opinion. *Id.*

Judge Clay further explained that *Erlinger* also "constrains the documents [circuit courts] may look at on appeal." *Id.* at *14. *Erlinger* explicitly barred district courts from using *Shepard* documents to conduct the occasions inquiry, *id.* (citing *Erlinger*, 602 U.S. at 839–41), and a circuit "cannot do what the Supreme Court has forbidden district courts themselves from doing." *Id.* "Otherwise," Judge Clay opined, "we yield the bizarre result that "the remedy for a constitutional violation by a trial judge making the determination of criminal guilt reserved to the jury) is a repetition of the same constitutional violation by the appellate court (making the determination of criminal guilt reserved to the jury)."" *Id.* (quoting *Neder v. United States*, 527 U.S. 1, 32 (1999) (Scalia, J., dissenting in part)).

Cogdill encapsulates why the *Erlinger* issues in Mr. Perrin's petition are important and warrant this Court's review: despite a forceful opinion from a federal circuit judge as to why *Erlinger* errors are structural—and why, even if harmless-error analysis applies, circuit courts cannot rely on *Shepard* documents—the courts of appeals are clinging to their erroneous holdings. In doing so, they are compounding the constitutional error and, in Mr. Perrin's case, leaving him subject to

five additional years in prison beyond what his guilty plea authorized. "[W]hat reasonable citizen wouldn't bear a rightly diminished view of the judicial process and its integrity of courts refused to correct obvious errors of their own devise that threaten to require individuals to linger loner in federal prison than the law demands?" *Rosales-Mireles v. United States*, 585 U.S. 129, 141 (2018) (quoting *United States v. Sabillon-Umana*, 772 F.3d 1328, 1333–34 (10th Cir. 2014) (Gorsuch, J.)).

CONCLUSION

The Court should grant the petition for a writ of certiorari. Alternatively, for the reasons explained in Mr. Perrin's petition for a writ of certiorari, the Court should hold the petition pending its decision in *Harris v. United States*, No. 24-5776.

Respectfully submitted,

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