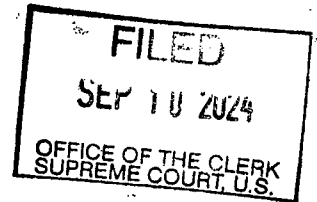


No. 24-6474

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Leonard Morrison — PETITIONER  
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Leonard Morrison, 36748 037<sup>#</sup>  
(Your Name)

F.C.I. Beaumont Low  
(Address)

Beaumont, Tx 77720  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## Questions Presented

1. Does the recent Supreme Court ruling in \*Erlinger v. United States\*, 602 U.S. \_\_\_\_ (2024), render unconstitutional the enhancements imposed under the Armed Career Criminal Act (ACCA) when the associated charges were not proven beyond a reasonable doubt by a jury?.
2. Did the Fifth Circuit err in denying a Certificate of Appealability by incorrectly asserting that a ground was not argued in the 2255 motion, despite evidence indicating otherwise?
3. Was the district court's denial of the 2255 motion erroneous due to the failure of the prosecution to prove that the predicate offenses used to enhance under the Armed Career Criminal Act (ACCA) qualify as such?
4. Is the application of Federal Rule of Criminal Procedure 59(e) relevant to the arguments presented in Ground 11 of the 2255 motion?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A. to the petition and is

☒ reported at 2024 U.S. App Lexis 14306; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix B. to the petition and is

☒ reported at 2023 U.S. Dist. Lexis 20072; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

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**Statement of Jurisdiction**

**This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1), as this case arises from the decision of the United States Court of Appeals for the Fifth Circuit.**

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

924(e) Except as otherwise provided in this chapter, whoever in the case of a person violates 922(g) of this title [18USCS 922(g)] and has three previous convictions by any court referred to in section 922(g)(1) of the title [18USCS 922(g)(1)] for a 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 or grant a probationary sentence to, such person with respect to the conviction under section 922(g) [18USCS 922(g)]

5th Amendment, No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in a case arising in the land or naval forces, or in the Military, in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use, without compensation.

6th Amendment. In all criminal prosecutions, the accused shall enjoy the right to a speedy trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness

against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

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### Statement of the Case

This case arises from the denial of a 28 U.S.C. § 2255 motion by the district court, which was subsequently upheld by the Fifth Circuit Court of Appeals. The petitioner contends that a specific ground was improperly excluded from consideration, despite being timely supplemented and acknowledged by both the prosecutor and the district judge. Additionally, the petitioner challenges the classification of prior state convictions as predicate offenses under the ACCA.

The recent Supreme Court decision in *Erlinger v. United States*, 602 U.S. (2024), applies to petitioner.

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## REASONS FOR GRANTING THE PETITION AND ARGUMENT

### #### A. Unconstitutionality of Sentence Enhancements Under the ACCA Following \*Erlinger v. United States\*

The recent Supreme Court decision in \*Erlinger v. United States\*, 602 U.S. \_\_\_\_ (2024), was decided while Morrison's COA was pending, therefore a successive or 2<sup>nd</sup> 2255 is not needed to be filled by petitioner. It was ordered on 8/15/2024 by the United States Court of Appeals for the Fifth Circuit that the appellant's motion for leave to file petition for rehearing en banc out of time is Denied. Petitioner had 90 from that date to file this instant Certiorari. Erlinger clarifies that any factors utilized to enhance a sentence under the ACCA must be established beyond a reasonable doubt to a jury. Failing to present the relevant charges to a jury for determination violates the defendant's rights under the Fifth and Sixth Amendments. Consequently, the enhancements imposed must be vacated as they did not adhere to constitutional standards.

doubt. The ruling in *Erlinger* further solidifies this principle, emphasizing the essential role of the jury in determining any factors that lead to sentence enhancement.

#### B. Circuit's Erroneous Denial of a Certificate of Appealability

The Fifth Circuit erroneously denied a Certificate of Appealability (COA), asserting that a specific argument was not presented in the 2255 motion. This assertion contradicts the record, which demonstrates that ground 11 was indeed part of the 2255 motion, as evidenced by responses from both the prosecutor and the district judge

##### .1. **\*\*Timeline of Events:\*\***

- **\*\*10/19/22:\*\*** Motion for leave to supplement the 2255 motion  
was timely filed.
  
- **\*\*12/11/22:\*\*** Both the prosecutor and the district court judge  
responded to the timely supplemented Ground 11.

- \*\*02/07/23:\*\* The judge's order and reason for denying the case were issued.

The record clearly shows, contrary to the 5<sup>th</sup> cir court of appeals assertion that Morrison abandoned his ground 11 argument because it was not apart of his 2255. Even though the district court erroneously responded to the ground, it was indeed apart of Morrison's 2255.

In *\*Miller-El v. Cockrell\**, 537 U.S. 322 (2003), the Supreme Court held that a petitioner is entitled to a COA if they make a substantial showing of the denial of a constitutional right. The timely supplementation of this ground, in accordance with the rules of appeal, reinforces the argument that the appellate panel's determination was erroneous.

### C. The District Court's Erroneous Denial of the 2255 Motion

The district court's denial of the 2255 motion was fundamentally flawed due to a misapplication of the law regarding predicate offenses under the Armed Career Criminal Act (ACCA). The prosecution bears the burden of proving that prior state convictions qualify as predicate offenses, as established in *\*Descamps v. United States\**, 570 U.S. 254 (2013).

The state convictions used to enhance the petitioner's sentence—specifically, possession with intent to distribute cocaine, attempted possession with intent to distribute MDMA, and distribution of marijuana—are broader than their federal counterparts. According to the definition of the ACCA, only two isomers are punished at the federal level, while Louisiana punishes all isomers of cocaine, marijuana, and MDMA. Therefore, the petitioner's charges do not qualify as predicate offenses under the ACCA.

The Supreme Court has clarified in *\*Taylor v. United States\**, 495 U.S. 575 (1990), that when the statutory definition is unambiguous, there is no

need to consult commentary or legislative history. The language of the ACCA clearly excludes the petitioner's charges from qualifying as predicate offenses, supporting the argument that the prosecution has not met its burden of proof.

Cocaine is only penalized at the federal level optically and geometrically. If the state's definition of the crime "sweeps more broadly, or punishes more conduct than the federal definition, the conviction does not qualify as a "serious drug felony" for predicate offense purposes. *United States v. Vanoy*, 957 F.3d 865, 867 (8<sup>th</sup> Cir. 2020). The way to determine whether a state statute "sweeps more broadly" is by examining its text and structure. *Id.* At 868. Sometimes, a statute lays out a single crime with a single set of elements. See *Schneider*, 905 F.3d at 1090. In analyzing this type, a so-called "indivisible" statute, we simply check to see if it "criminalizes a broader swath of conduct" than the generic offense or federal definition, whichever happens to apply. *Descamps v. United States*, 570 U.S. 254, 258 (2013); see also *Shular*, 140 S. Ct. at 783–84. The task becomes more difficult, however, if a statute is "divisible," meaning it defines "multiple crimes by listing more than one set of elements. The Louisiana definition for cocaine as follows sweeps more broadly than the federal definition, Coca

leaves, cocaine, ecgonine and any salt, isomer, salt of an isomer, compound, derivative, or preparation of coca leaves, cocaine or ecgonine and any salt, isomer, salt of an isomer, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine. Cocaine has multiple isomers. The problem for the government is federal law criminalizes just two : optical and geometrical. Louisiana law by contrast bands them all. We have already concluded that a drug statute that penalizes even one more isomer does not qualify as a “serious drug felony” for ACCA purposes. *United States v Oliver* 987 f3d. 794, 807-07 8<sup>th</sup> (2021) holding that an Illinois drug statute was overbroad because it covered “optical, positional, and geometric isomers” of cocaine (emphasis added)). It should come as no surprise that a statute that reaches even more is overbroad too. See *United States v. De La Torre*, 940 F.3d 938, 951 (7<sup>th</sup> Cir. 2019) (interpreting a similar Indiana statute the same way). This means that Owen’s third-degree drug-sale convictions do not count as “serious drug offense[s]” under ACCA. See *Oliver*, 987 F.3d at 806–07. III. Despite the clear and unambiguous language in Minnesota’s definition, the government claims that there is

no “realistic probability” that Minnesota would prosecute the sale of cocaine isomers other than those listed in the federal schedules. At best, it argues, a prosecution for anything other than an optical or geometric isomer is only a “theoretical possibility.” After all, according to the government, other isomers exist only in the lab at this point. The science notwithstanding, the government’s argument cannot succeed because the realistic-probability test is about resolving ambiguities. See *Gonzalez v. Wilkinson*, 990 F.3d 654, 660 (8<sup>th</sup> Cir. 2021) (explaining that the realistic-probability test applies only when a state statute has an “indeterminate reach” (citation omitted)); see also Br. Of Appellant 38 (describing it as a “useful interpretive rule to resolve a state statute’s ambiguity”). Compare *Brown v. United States*, 929 F.3d 554, 559 (8<sup>th</sup> Cir. 2019) (adopting the same rule in an ACCA case), with *United States v. Bragg*, 44 F.4<sup>th</sup> 1067, 1076 (8<sup>th</sup> Cir. 2022) (declining to apply Gonzalez’s approach in a case involving ACCA’s force clause). The definition of cocaine, as we explain above, is unambiguously broad. A clear reading of the above illustrates that the charge of possession with intent to distribute to cocaine in Louisiana used to enhance Morrison does not count as a predicate offense under the ACCA. Petitioner Morrison wishes to have the case of Alston Nicholas 2:16-CV-

00016-JMS-DLP highlighted. In that case the petitioner in his 2255 argued the same as Morrison is arguing now and was initially denied by the district courts, later to be granted his 2255 motion after filing a 59 (e) motion demonstrating a manifest error of law or fact or present newly discovered evidence. A “manifest error”, occurs when “The district Court commits a wholesale disregard, misapplication, or failure to recognize controlling precedent”. *Stragapede v. City of Evanston Illinois* 865 F.3d 861, 868 7<sup>th</sup> Cir 2017 . Petitioner Morrison seeks to have the ACCA enhancement removed and resentenced without that enhancement in regards to this ground.

#### D. Ground 11 and Federal Rule of Criminal Procedure 59(e)

Ground 11 of the 2255 motion was brought under Federal Rule of Criminal Procedure 59(e), which allows a party to file a motion to alter or

amend a judgment within 28 days after the entry of the judgment. This rule is intended to afford the court an opportunity to rectify any errors that may have occurred, ensuring that justice is served and that all relevant arguments are considered.

The application of Rule 59(e) is relevant to the current issues because it underscores the timeliness and appropriateness of the arguments presented by the petitioner. By utilizing this rule, the petitioner sought to ensure that all grounds for relief were thoroughly considered, further demonstrating the procedural integrity of the appeal process.

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## REASONS FOR GRANTING THE PETITION

The Court should grant certiorari in this case due to several compelling reasons that highlight both the erroneous nature of the lower court's decision and the national significance of the issues involved, particularly in relation to the petitioner's constitutional rights.

First, the timing of that ruling, occurring while the petitioner's case was under review, entitles the petitioner to benefit from its findings. This underscores the principle of fairness in judicial proceedings. Under *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987), new Supreme Court rulings apply retroactively to all cases pending on direct review. The failure to incorporate *Erlinger* not only contravenes this well-established principle but also deprives the petitioner and similarly situated litigants of the benefits of this Court's binding authority. This undermines the integrity of federal jurisprudence and warrants this Court's intervention to enforce its precedent uniformly.

Second, the appellate court's assertion that a certain ground was barred due to its absence from the initial 2255 motion is factually incorrect. The record clearly indicates that this ground was included in the petitioner's initial motion. This mischaracterization not only undermines the integrity of the judicial process but also violates the principles of due process under the 5th Amendment. The Supreme Court's clarification on such procedural misinterpretations is essential to prevent arbitrary denials of justice in future cases.

Third, the petitioner's sentence was enhanced under the ACCA based on prior state offenses that do not qualify as predicate offenses under federal law. The state statute criminalizes isomers more broadly than federal law, which is inconsistent with this Court's holdings.

In *Descamps v. United States*, 570 U.S. 254, 268-69 (2013), and *Mathis v. United States*, 579 U.S. 500, 511 (2016). These decisions establish that state offenses must match the federal definition to qualify as predicate under the ACCA. The appellate court's failure to follow this precedent perpetuates an unconstitutional sentence and create disparities in the application of federal sentencing enhancements. This discrepancy raises critical issues of fairness and proportionality in sentencing, as outlined in *\*Taylor v. United States\**, 495 U.S. (1990), where the Court emphasized the need for a uniform federal standard.

Fourth, the continuous violation of the petitioner's 5th and 6th Amendment rights as a result of the lower court's decisions highlights the urgent need for Supreme Court review. The lower court's actions not only affect the petitioner but also set a dangerous precedent for others similarly situated. The Supreme Court's role in correcting these lower court errors is crucial to uphold the rule of law and protect the rights of individuals across the nation.

Furthermore, the decision of the lower court conflicts with the rulings of other appellate courts regarding the interpretation of predicate offenses under the ACCA. This inconsistency undermines the uniform application of federal law, which is a primary function of the Supreme Court. As established in *\*United States v. Johnson\**, 559 U.S. 133 (2010), the Court must address these discrepancies to maintain the integrity of the judicial system.

Fifth, National Importance and Conflicts Among Circuits, this case raises issues of significant national importance, ensuring consistent application of Supreme Court precedent across all jurisdictions. Clarifying the scope of the ACCA in light of state statutes that define offenses more broadly than federal law.

Protecting litigants' constitutional rights in post-conviction proceedings.

Furthermore, the appellate court's decision conflicts with decisions in other circuits, such as those in *United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020), which correctly held that broader state definitions can not be used as ACCA predicates. Certiorari is warranted to resolve these conflicts and provide uniform guidance to lower courts.

In summary, granting certiorari in this case is imperative not only to rectify the specific injustices faced by the petitioner but also to reaffirm the Supreme Court's role in addressing significant legal questions that affect a broader spectrum of individuals. The issues at stake are not merely about one individual's rights; they reflect fundamental questions about the application of justice in the federal system, the interpretation of federal statutes, and the protection of constitutional rights for all.

For these reasons, the Court should grant certiorari to ensure justice is served and to provide clarity on these vital legal issues.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*Lucas Meeni*

Date: 1-3-25