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In The

SUPREME COURT OF THE UNITED STATES

October Term 2023

***Troy L. Fields*,**

Applicant,

v.

The People of the State of Colorado,

Respondent.

Application for Extension of Time Within Which to File a Petition for a Writ of Certiorari to the Colorado Court of Appeals

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APPLICATION TO THE HONORABLE NEIL M. GORSUCH AS CIRCUIT JUSTICE

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July 24, 2024

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APPLICATION FOR AN EXTENSION OF TIME

Under this Court's Rule 13.5, Applicant Troy L. Fields respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari, to and including October 4, 2024.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Colorado* v. *Fields*, 2023 WL 4979843, No. 20CA1708 (Colo. App. Aug. 3, 2023) (attached as Exhibit 1), *cert. denied*, 2024 WL 2034638, No. 2023SC691 (Colo. May 6, 2024) (attached as Exhibit 2).

JURISDICTION

This Court will have jurisdiction over any timely petition under 28 U.S.C. § 1257. The Colorado Court of Appeals issued its judgment on August 3, 2023, and the Colorado Supreme Court denied Mr. Fields's timely petition for writ of certiorari on May 6, 2024. The 90-day deadline under Rule 13.1 falls on August 4, 2024, a Sunday. Thus, under Rule 30.1, a petition to this Court is currently due by Monday, August 5, 2024. In accordance with Rule 13.5, this application is being filed more than 10 days before that date.

REASONS JUSTIFYING AN EXTENSION OF TIME

1. The court below resolved an important constitutional question in a way that directly conflicts with this Court's controlling precedent. Mr. Fields was convicted of sexual assault and kidnapping. He was also adjudicated to be a habitual criminal under Colorado law, which quadrupled his maximum

presumptive sentence. Colorado's habitual-criminal scheme applies to someone who was "convicted of" certain prior offenses "arising out of separate and distinct criminal episodes." Colo. Rev. Stat. § 18-1.3-801(b)(I); *see* Colo. Rev. Stat. § 16-13-101(2) (1994). The trial court, not the jury, found the facts relevant to this determination.

"Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). Mr. Fields thus argued below that, under *Apprendi*, the Constitution "required the jury to find that his prior convictions were separately brought and tried and arose out of separate and distinct criminal episodes." Ex. 1, ¶ 25.

The Colorado Court of Appeals rejected this argument. It held that "*Apprendi*'s prior conviction exception" to the Sixth Amendment's jury-finding requirement encompasses "whether prior convictions were separately brought and tried and arose out of separate and distinct criminal episodes." *Id.* ¶ 26. The court believed these facts about a prior conviction "can be definitively established based on the judicial records introduced at the habitual criminal trial" and thus are "matters of law for the court." *Id.* ¶ 27. The Colorado Supreme Court denied review. See Ex. 2.

But just a few weeks later, this Court definitively rejected the Colorado court's view. In *Erlinger* v. *United States*, this Court held that "the Fifth and Sixth Amendments require a unanimous jury" to determine beyond a reasonable doubt

whether "a defendant's past offenses were committed on separate occasions" for purposes of the Armed Career Criminal Act. 144 S. Ct. 1840, 1846 (2024). ACCA requires three predicate convictions "committed on occasions different from one another." *Id.* at 1851 (quoting 18 U.S.C. § 924(e)(1)). Determining whether offenses were committed on different occasions "require[s] facts to be found before ACCA's more punitive mandatory minimum sentence may be lawfully deployed." *Id.* And under the prior-conviction exception, "a judge may 'do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant was convicted of.'" *Id.* at 1845 (quoting *Mathis* v. *United States*, 579 U.S. 500, 511–12 (2016)).

Likewise here, Colorado law requires "separate and distinct" predicate convictions. Colo. Rev. Stat. § 18-1.3-801(b)(I). A defendant cannot be deemed a habitual offender, subject to a greatly increased sentence, unless the facts establish such separate offenses. Thus, as in *Erlinger*—and contrary to the decision below—the Fifth and Sixth Amendments required a jury to make these findings. "To determine whether Mr. [Fields's] prior convictions triggered [Colorado's] enhanced penalties [for habitual offenders], the [trial] court had to do more than identify his previous convictions and the legal elements required to sustain them. It had to find that those offenses occurred on . . . separate occasions. And, in doing so, the court did more than [the Constitution] allows." *Erlinger*, 144 S. Ct. at 1854.

This case is thus a strong candidate for vacatur and remand in light of *Erlinger*. See, *e.g.*, *McCall* v. *United States*, No. 22-7630; *Thomas* v. *United States*,

No. 23-5457; *Valencia* v. *United States*, No. 23-5606; *Cogdill* v. *United States*, No. 23-6013; *Washington* v. *United States*, No. 23-6038. Alternatively, this case warrants plenary review to address *Erlinger*'s application to state-law recidivist schemes that mirror ACCA.

2. Undersigned counsel would not typically request a 60-day extension, but one is warranted here because Mr. Fields just recently asked the Northwestern Supreme Court Practicum to help prepare his petition. Thus, the Practicum and undersigned counsel are just beginning to familiarize themselves with the case. And because of the academic calendar, the Practicum currently has no students to work on the petition. The Practicum's academic year begins on August 30. A 60-day extension will thus allow counsel to learn the case and provide time after the academic year starts for the Practicum's students to complete a cogent and well-researched petition.

An extension is also warranted because of the press of counsel's other client business. The Practicum and undersigned counsel are also responsible for reply briefs in support of the petitions in *Martinez* v. *Garland*, No. 23-7678, and *Wilfred H.* v. *Ames*, No. 23-7585, a forthcoming petition in *United States* v. *Aquart*, No. 21-2763 (2d Cir.). And undersigned counsel is responsible for ongoing merits briefing in several court of appeals cases. See *Ass'n of Am. R.R.* v. *Hudson*, No. 24-1399 (4th Cir.); *Morgan* v. *Bureau of Prisons*, No. 22-2731 (7th Cir.); *Wisc. Cent. Ltd.* v. *Surface Transp. Bd.*, No. 24-1484 (7th Cir.); *Grand Trunk Corp.* v. *Surface Transp. Bd.*, No. 24-1811 (7th Cir.).

CONCLUSION

For these reasons, Applicant respectfully requests an extension of 60 days, to and including October 4, 2024, within which to petition for review in this case.

Respectfully submitted,

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