**No. _____**

In the

Supreme Court of the United States

_____

**Lakeith Lynn Washington**,

*Petitioner,*

v.

**United States of America**,

*Respondent.*

_____

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

_____

# PETITION FOR A WRIT OF CERTIORARI

_____

Adam Nicholson
*Assistant Federal Public Defender*

Federal Public Defender's Office
Northern District of Texas
525 S. Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
Adam_Nicholson@fd.org

## QUESTIONS PRESENTED

Petitioner Lakeith Lynn Washington was sentenced under the Armed Career Criminal Act (ACCA) to 180 months of imprisonment, despite the fact that the indictment never charged, no jury ever found, and he never admitted that he incurred three qualifying convictions committed on separate occasions. Although this conviction was initially affirmed by the court of appeals, this Court granted Petitioner's prior petition for certiorari, vacated the prior opinion of the court of appeals, and remanded the case to the court of appeals for reconsideration in light of *Erlinger v. United States*, 602 U.S. 821 (2024). On remand, however, the court of appeals applied the harmless error test from *Neder v. United States*, 527 U.S. 1, 25 (1999), and again affirmed.

Mr. Washington asks whether, as several courts of appeal have held, all *Apprendi* errors including *Erlinger* violations should be treated as trial errors subject to the harmless-error test from *Neder*, or, whether, as the Third Circuit has held, at least some *Apprendi* errors should be treated as sentencing errors and evaluated under the harmless-error test from *Parker v. Dugger*, 498 U.S. 308 (1991)?

## PARTIES TO THE PROCEEDING

Petitioner is Lakeith Lynn Washington, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Lakeith Lynn Washington seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

## OPINIONS BELOW

This petition arises from the opinion of the court of appeals on remand from this Court. The opinion on remand is available at *United States v. Washington*, No. 22-10574, 2025 WL 522556 (5th Cir. Feb. 18, 2025). It is reprinted as Appendix A to this Petition. The initial opinion on appeal is available at *United States v. Washington*, No. 22-10574, 2023 WL 5275013 (5th Cir. Aug. 16, 2023). It is reprinted as Appendix D to this Petition. The district court's judgment and sentence is attached as Appendix E.

## JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on February 18, 2025. The court of appeals denied a timely petition for rehearing en banc on April 4, 2025. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

## RELEVANT STATUTE AND CONSTITUTIONAL PROVISIONS

Section 922(g) of Title 18 reads in relevant part:

> It shall be unlawful for any person—
>
> (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year …
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Section 924(e) of Title 18 reads in relevant part:

(e)(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).

(e)(2)(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that--

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another[.]

The Fifth Amendment to the United State Constitution provides:

No person 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 to the United States Constitution provides:

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

## STATEMENT OF THE CASE

### A. Facts and Proceedings in District Court

The government obtained a two-count indictment against Petitioner Lakeith Washington, including one count alleging that he possessed a firearm following a single felony conviction. (ROA.9). It did not allege that he had three prior convictions for offenses committed on separate occasions. (ROA.9-12).

Petitioner pleaded guilty, (ROA.165-83), admitting one conviction. (ROA.177-83).

The Presentence Report (PSR) recommended a sentence range of 188 to 235 months of imprisonment, well in excess of ten years, on the ground that Petitioner had sustained three "violent felon[ies]" for crimes committed on separate occasions. (ROA.226, 28). Specifically, it named three burglary convictions. (ROA.226).

Although Petitioner acknowledged that his sentencing range might be elevated by the Armed Career Criminal Act ("ACCA"), he expressly objected in writing to the conclusion drawn in the Presentence Report that he was subject to the enhanced statutory penalties of the ACCA. (ROA.261-62) . He contended that:

> the existence and sequence of prior convictions is an element of the offense that must be pleaded in the indictment and either proven to a jury beyond a reasonable doubt or admitted by the defendant in the course of his plea.

(ROA.261).

The district court applied ACCA, (ROA.168-69), and imposed a 180-month sentence. (ROA.130). Mr. Washington appealed.

## B. Appellate Proceedings

In his Initial Brief on appeal, Petitioner asserted, *inter alia*, that the separate occasions requirement set forth in ACCA represented an element of his offense, and that the district court could therefore impose no more than ten years imprisonment. *See* Initial Brief in *United States v. Washington*, No. 22-10574, 2022 WL 17883910, at **13-25 (5th Cir. Filed December 16, 2022). A panel of the court of appeals affirmed the district court's judgment, concluding that this Court's decision in *Wooden v. United States*, 595 U.S. 360 (2022), did "not invalidate [our] precedent authorizing the sentencing judge to conduct § 924(e)(1)'s 'different occasions' inquiry." *Wooden v. United States*, No. 22-10574, 2023 WL 5275013, at *2 (5th Cir. 2023) (citing *United States v. Valencia*, 66 F.4th 1032, 1032-33 (5th Cir. 2023) (per curiam)).

Petitioner sought a writ of certiorari on this issue, asking the Court, *inter alia*, to decide whether, before an ACCA enhancement is applied, the fact of prior convictions having been committed on "occasions different from one another" must "alleged in the indictment and either proven to a jury beyond a reasonable doubt or admitted to by the defendant, under the principles articulated in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013)." Pet. for Writ of Cert. in *Washington v. United States*, No. 23-6038, at **6-13 (filed Nov. 14, 2023).

During the pendency of Petitioner's cert petition, the Court issued *Erlinger v. United States*, 602 U.S. 821 (2024), which vindicated Petitioner's constitutional claim on the merits. Later, the Court granted Mr. Washington's petition, vacated the ruling

of the court of appeals, and remanded the matter to the court of appeals for further consideration in light of *Erlinger*. *Washington v. United States*, 144 S.Ct. 2711, 2711 (2024).

On remand, the panel concluded, *inter alia*, that Petitioner could not demonstrate that he suffered any harm in by the failure to have his prior offenses submitted to a jury as sentencing elements, because "any rational jury would have found that his burglaries were committed on different occasions." *See United States v. Washington*, 2025 WL 522556, *1 (5th Cir. Feb. 18, 2025) (citing *Neder v. United States*, 527 U.S. 212, 222 (2006), for the premise that such structural error "can be harmless error beyond a reasonable doubt.").

Petitioner sought en banc reconsideration of the panel's decision. Pet. for Rehearing En Banc in *United States v. Washington*, No. 22-10574 (5th Cir. Filed Mar. 4, 2025). The court of appeals denied the motion. Order in *United States v. Washington*, No. 22-10574 (5th Cir. Apr. 4, 2025).

## REASONS FOR GRANTING THE PETITION

In *Erlinger*, this Court held that the Fifth and Sixth amendments require a jury—not a judge—to resolve the ACCA's "different occasions" inquiry unanimously and beyond a reasonable doubt. 602 U.S. at 834. It explained: "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." *Id.* "To hold otherwise," warned the Court, "would intrude on a power the Fifth and Sixth Amendments reserve to the American people." *Id.* at 834-35.

Nonetheless, courts across the country are doing just that. Many cases were remanded in the wake of *Erlinger*, and the Circuits were forced to grapple with the question of whether the error committed below was harmless, or whether the defendant-Petitioner—sentenced in violation of the Constitution—was entitled to relief. In published decisions, the Fourth, Sixth, Seventh, Eighth, and Eleventh Circuits joined the Fifth Circuit in applying harmless-error analysis to *Erlinger* errors. *See, e.g.*, *United States v. Campbell*, 122 F. 4th 624, 630-31 (6th Cir. 2024) (viewing *Erlinger* error as "part and parcel with the errors in *Apprendi and Alleyne [v. United States*, 570 U.S. 99, (2013)]" and subject to the harmless error analysis used in *Neder* and *Washington v. Recuenco*, 548 U.S. 212, 222 (2006)); *United States v. Brown*, --F. 4th --, No. 21-4253, 2025 WL 1232493 at **4-5 (4th Cir. Apr. 29, 2025*)* (same); *United States v. Bowling*, --F. 4th --, No. 24-1010, 2025 WL 1258746 (8th Cir. May 1, 2025) (same); *United States v. Johnson*, 114 F. 4th 913, 917 (7th Cir. 2024) (applying *Neder's* harmlessness test but finding that *Erlinger* error was not

harmless); *United States v. Rivers*, 134 F. 4th 1292, 1305-06 (11th Cir. 2025) (same); *see also United States v. Saunders*, No. 23-6735, 2024 WL 4533359, at **2-3 (2d Cir. Oct. 21, 2024) (unpublished) (applying *Neder's* harmless-error test and finding *Erlinge*r error harmless beyond a reasonable doubt); *but see United States v. Man*, No. 21-10241, 2022 WL 17260489 (9th Cir. Nov. 29, 2022) (unpublished) (holding that *Erlinger* error was *not* harmless where the "PSR was the only evidence before the district court of the occasions on which Man committed his ACCA predicate offenses."). *Neder,* applied by these circuits in assessing harm, involved the omission of a materiality element from the indictment and charge in a tax fraud case; this Court held that this error could be harmless, so long as it could confidently find it "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." *Neder*, 527 U.S. at 18.

In applying the *Neder* standard, these Circuits have effectively undertaken the exact inquiry that *Erlinger* held unconstitutional. These appellate courts examined *Shepard* documents—or worse, PSR summaries of *Shepard* documents—and speculated as to whether a jury could conclude that the predicate offenses occurred on separate occasions. *See, e.g.*, *Washington*, 125 F. 4th at 742 (examining *Shepard* documents and concluding that "gaps of weeks or even years separated [his] prior offenses[,]" and that "[i]n the absence of any substantiated argument that he would not have pleaded guilty, Washington has not established that the district court's *Erlinger* error affected his substantial rights."); *United States v. Butler*, 122 F. 4th 584, 590 (5th Cir. 2024) (relying on the PSR and *Shepard* documents, which showed

a range of months to several years between offenses to hold that *Erlinger* error was harmless); *United States v. Valencia*, --F. 4th --, No. 22-50283, 2025 WL 1409043 at **2-3 (5th Cir. May 15, 2025) (reviewing *Shepard* documents and concluding that *Erlinger* error was harmless beyond a reasonable doubt); *Saunders*, No. 23-6735, 2024 WL 4533359, at *3 (same); *Campbell*, 122 F.4th at 632 (same); *United States v. Xavior-Smith*, --F. 4th --, No. 22-3085, 2025 WL 1428240 at *1 (8th Cir. May 19, 2025) (same); *Brown*, --F. 4th --, No. 21-4253, 2025 WL 1232493 at **4-5 (concluding that *Erlinge*r error was harmless after reviewing PSR's summary of *Shepard* documents); *Bowling*, --F. 4th --, No. 24-1010, 2025 WL 1258746 at *2 (same). Despite this Court's clear instruction that "[t]here is no efficiency exception to the Fifth and Sixth Amendments," *Erlinger*, 602 U.S. at 842, many individuals have been deprived of relief, while judges conducted the exact "separate occasions" inquiry that *Erlinger* forbade. Indeed, if a district court after Erlinger chose to decide the separate occasions question itself, perhaps reasoning that some gap between prior offenses rendered them separate "as a matter of law," that court could be affirmed in these circuits, so long as the circuit court did not think the matter sufficiently close. In other words, it is entirely possible in these courts that defendants could receive the enhanced sentence of ACCA based on the factual conclusions of judges alone.

The Third Circuit, however, uses a different methodology for *Apprendi* errors, reviewing such errors for harmlessness not under *Neder*, but *Parker v. Dugger*, 498 U.S. 308 (1991). *See United States v. Lewis*, 802 F.3d 449 (3d Cir. 2015) (en banc). This Court's intervention is necessary to ensure uniformity among the Circuits and

to vindicate the rights of defendants sentenced in violation of *Erlinger*. This Court should grant certiorari.

## I. This Court should intervene to vindicate the constitutional rights of defendants who were sentenced in violation of *Erlinger* by providing guidance about the proper inquiry to determine whether *Erlinger* error is harmless.

*Erlinger* warned *specifically* about the dangers of allowing a judge to make the "separate occasions" determination based on *Shepard* documents. It stated: "*Shepard* documents will not contain all the information needed to conduct a sensible ACCA occasions inquiry, such as the exact times and locations of the defendant's past crimes." *Erlinger*, 602 U.S. at 840. "Even when *Shepard* documents do contain that kind of granular information, more still may be required. After all, this Court has held that no particular lapse of time or distance between offenses automatically separates a single occasion from distinct ones." *Id.* at 841 (citing *Wooden*, 595 U.S. at 369-70). And, "[n]ot only are *Shepard* documents of limited utility, they can be prone to error." *Id.* (citations omitted; cleaned up). "The risk of error may be especially grave when it comes to facts recounted in *Shepard* documents on which adversarial testing was 'unnecessary' in the prior proceeding." *Id.* (citation omitted). "At the time of his prior conviction, a defendant might not have cared if a judicial record contained a mistake about, say, the time or location of his offense." *Id.* However, "years later and faced with an ACCA charge, those kinds of details can carry with them life-altering consequences." *Id.*

The Court acknowledged that "[o]ften, a defendant's past offenses will be different enough and separated by enough time and space that there is little question

he committed them on separate occasions." *Id.* at 842. Critically, however, it added that "none of that means a judge rather than a jury should make the call." *Id.* "There is no efficiency exception to the Fifth and Sixth Amendment." *Id.* "In a free society respectful of the individual, a criminal defendant enjoys the right to hold the government to the burden of proving its case beyond a reasonable doubt to a unanimous jury of his peers regardless of how overwhelming the evidence may seem to a judge." *Id.* (citation omitted; cleaned up).

Chief Justice Roberts in his concurrence and Justice Kavanaugh in his dissent indicated that most constitutional errors, including violations of the Sixth Amendment, are generally subject to harmless-error review. *See id.* at 849-50 (Roberts, C.J., concurring); *id.* at 859-61 (Kavanaugh, J., dissenting). This language appears to have emboldened courts to apply *Neder's* harmless-error test to *Erlinger* errors. *See, e.g., Rivers*, 134 F.4th at 1305 ("Even though the *Erlinger* majority did not discuss harmless error, two justices separately suggested that in their views harmless error review was appropriate.") (citing *Erlinger*, 602 U.S. at 849-850 (Roberts, C.J., concurring); *Erlinger*, 602 U.S. at 859 (Kavanaugh, J., dissenting)); *Campbell*, 122 F. 4th at 630 (citing Chief Justice Roberts's and Justice Kavanaugh's opinions as "recognizing [that] harmless error applies in this setting").

The *Erlinger* majority, however, gave no suggestion that courts of appeals might affirm ACCA sentences based on judicial fact-finding, so long as they thought that fact-finding sufficiently correct. *See id.* at 835 ("While recognizing Mr. Erlinger was entitled to have a jury resolve ACCA's occasions inquiry unanimously and beyond

a reasonable doubt, we decide no more than that."); *id.* at 849 (remanding the case to the Seventh Circuit for "further proceedings consistent with this opinion"). The Court should clarify the proper standard.

The Fifth Circuit determined that an *Erlinger* error is an *Apprendi* error—which, it claimed—is "not [a] structural error[,]" and therefore, subject to harmless-error analysis. *Washington*, 125 F. 4th at 739; *id.* at 739, n. 27 (citing *United States v. Butler*, 122 F. 4th 584, 589-90 (5th Cir. 2024)) (citations omitted, cleaned up). It thus asked whether "if the district court had correctly submitted the separate-occasions inquiry to the jury, there is a reasonable probability that [the defendant] would not be subject to the ACCA-enhanced sentence." *Id.* at 739 (footnote omitted); *accord United States v. Schorovsky*, No. 23-50040, 2025 WL 471108 at **2-3 (5th Cir. Feb. 12, 2025) (unpublished); *United States v. Kerstetter*, No. 22-10253, 2025 WL 1079071 at **2-3 (5th Cir. Apr. 10, 2025); *United States v. Valencia*, --F. 4th --, No. 22-50283, 2025 WL 1409043 at **2-3 (5th Cir. May 15, 2025). In Mr. Washington's case, the Court examined *Shepard* documents to reach the conclusion that "gaps of weeks or even years separated [his] prior offenses[,]" and that "[i]n the absence of any substantiated argument that he would not have pleaded guilty, Washington has not established that the district court's *Erlinger* error affected his substantial rights." *Washington*, 125 F. 4th at 742.

Although Mr. Washington argued that such an approach is contrary to the Fifth Circuit's precedent, *see* Pet. for Reh'g En Banc at **5-12 [Appendix C], the Fifth Circuit disagreed and denied Mr. Washington's petition for rehearing en banc without

a poll. *See* Order in *United States v. Washington*, No. 22-11084, ECF No. 171 (5th Cir. Filed Feb. 21, 2025). Most courts have likewise analyzed *Erlinger* errors as "trial errors" subject to harmless-error review under *Neder*, which resulted in perpetuating the constitutional violation.

Although the courts of appeals generally see this analysis as compelled by this Court's harmless error precedent, many federal judges havenoted the tension between vindicating a litigant's rights under *Erlinger*, and then conducting the very analysis that it forbade. *See, e.g., United States v. Stowell*, 82 F. 4th 607, 613-14 (8th Cir. 2023) (en banc) (Erickson, J., dissenting) ("The problem with the majority's approach" of deciding that any Sixth Amendment error would have been harmless "is that it sidesteps the important constitutional question and reaches a conclusion by assuming facts the jury would have no way of knowing."); *Bowling*, --F. 4th --, No. 24-1010, 2025 WL 1258746 at *2 (Kelly, J., concurring) (agreeing that the outcome is dictated by *Stowell*, but "I remain of the view that we cannot simply rely on a presentence report's unchallenged facts when assessing harmlessness in these circumstances. . . . A defendant's decision not to challenge certain facts contained in a presentence report says nothing about whether evidence of those same facts would be admissible at a trial."); *Xavior-Smith*, --F. 4th --, No. 22-3085, 2025 WL 1428240 at *1 (Kelly, J., concurring) ("I continue to have concerns about relying on unchallenged facts at sentencing—including facts contained in documents of the sort admitted at Xavior-Smith's sentencing hearing—to decide whether a district court's occasion determination was harmless."); *Campbell*, 122 F.4th at 637 (Davis, J.,

concurring) ("[G]iven *Erlinger*'s caution, we should well consider whether the jury right we seek to protect in calling out an *Erlinger* error is best served through harmless error review reliant on *Shepard* documents.").

Notably, the *en banc* Third Circuit assesses *Apprendi* error quite differently, demonstrating that the prevailing view regarding the treatment of *Erlinger* error is not an inevitable reading of the precedent. In *United States v. Lewis*, 802 F.3d 449 (3d Cir. 2015) (en banc), the Third Circuit concluded that at least some *Apprendi* errors must be analyzed as sentencing errors when assessing prejudice. *Lewis*, 802 F.3d at 456. An *Apprendi* sentencing error, held the Third Circuit, must be assessed under the standard enunciated in *Parker v. Dugger*, 498 U.S. 308 (1991), which asks whether the error "would have made no difference to the sentence." *Id.* at 456 (quoting Parker, 498 U.S. at 319). By contrast, the Third Circuit held, *Apprendi* trial errors – such as the omission of sentence enhancing facts from the indictment or the omission of such factual questions from the jury charge – may be analyzed under *Neder*. *Id*. at 456. In *Lewis*, the defendant received a mandatory minimum of seven years for brandishing a firearm after a jury convicted him of violating 18 U.S.C. 924(c). Because the mandatory minimum applies only upon a finding that the defendant brandished the firearm, and because the jury never actually made that finding, all agreed that the district court committed Apprendi error. The Lewis en banc court held that this represented sentencing error, and reversed because the government could not show that the defendant would have received the same sentence in the absence of the mandatory minimum – it did not ask, as it would have

for trial error governed by *Neder*, whether any rational jury could have declined to find brandishing. The alternative, the Third Circuit stressed, "would run directly contrary to the essence of *Apprendi* and *Alleyne*" because the "motivating principle" behind *Apprendi* and *Alleyne* "is that judges must not decide facts that change the mandatory maximum or minimum; juries must do so." *Id.* at 456. "If we affirm because the evidence is overwhelming, then we are performing the very task that *Apprendi* and *Alleyne* instruct judges not to perform." *Id.* (citations omitted).

But this is *exactly* what Circuit courts across the country are doing—conducting the "separate occasions" determination based on *Shepard* documents, or worse, PSR summaries of those documents—despite *Erlinger's* admonishments about judges undertaking such inquiries. *See supra* page 14. In *Legins*, the Fourth Circuit reluctantly applied *Neder* and *Recuenco's* harmlessness test to *Apprendi* error, noting that "there is something deeply unsatisfying about this result." *See United States v. Legins*, 34 F.4th 304, 323 (4th Cir. 2022). "As Justice Scalia observed in his partial dissent in *Neder*, it is bizarre that a deprivation of the jury right, which reflects a distrust of judges to adjudicate criminal guilt, can be set aside as harmless when we judges find the result sufficiently clear." *Id.* (citation omitted). "It creates an inescapable irony," observed the court, "'in which 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 guilt reserved to the jury).'" *Id.* (citing *Neder*, 527 U.S. at 32 (Scalia, J., dissenting in part).

And yet, that is the reality across the country. Many defendants sentenced in violation of *Erlinger* are denied relief on remand, as a result of judges conducting the separate occasions inquiry that this Court made clear is reserved for juries. In Mr. Washington's case, these compounded constitutional violations cost him 11 years of freedom. This Court should intervene.The present case is a suitable vehicle to address the issue. Although the court below found the error unpreserved, all agree that the district court erred and that such error was plain. *Washington*, 125 F.4th at 739. The sole basis for the decision below was the absence of prejudice. *Id.* And the prejudice inquiry – whether the outcome would have been different but for the error – is the same whether or not the defendant preserved error, save one difference: who bears the burden of persuasion. *See United States v. Olano*, 507 U.S. 725, 732 (1993)( "When the defendant has made a timely objection to an error and Rule 52(a) applies, a court of appeals normally engages in a specific analysis of the district court record—a so-called "harmless error" inquiry—to determine whether the error was prejudicial. Rule 52(b) normally requires the same kind of inquiry, with one important difference: It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice.."). But if Petitioner is correct about the ultimate question at issue – whether the court would have imposed the same sentence had it used the range authorized by the plea – the burden of persuasion is irrelevant. The indictment and the plea authorized a sentence of up to ten years imprisonment; Petitioner received more than 21 years. If the question is simply whether the sentencing range affected the outcome, Petitioner can make that showing conclusively.

In the event that this Court does not view the instant Petition as an appropriate vehicle to address this issue, it should nonetheless grant certiorari to address the issue in a suitable case. Mr. Washington is aware of at least one petition of certiorari that will raise this issue.[1] There will likely be others. This Court should grant certiorari to decide this important and recurring issue, and, if it does so in another case, should hold the instant petition pending the outcome. *See Stutson v. United States*, 516 U.S. 163, 181 (1996) (Scalia, J., dissenting) ("We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted *in order that* (if appropriate) they may be 'GVR'd' when the case is decided.") (emphasis in original).

[1] *See* Application to Extend the Time to File a Petition for a Writ of Certiorari from May 20, 2025 to July 19, 2025, *Gerald Lynn Campbell v. United States*, No. 22-5567 at 4 (Filed May 5, 2025) (noting that the question presented in the petition for a writ of certiorari "will concern the correct standard and scope of review of *Erlinger* error.").

## CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 30th day of June, 2025.

**JASON D. HAWKINS**
**Federal Public Defender**
**Northern District of Texas**

/s/ Adam Nicholson
Adam Nicholson
Assistant Federal Public Defender
Federal Public Defender's Office
525 S. Griffin Street, Suite 629
Dallas, Texas 75202
Telephone: (214) 767-2746
E-mail: Adam_Nicholson@fd.org

*Counsel for Petitioner*