

No. A__

IN THE
Supreme Court of the United States

TYLER G. WILLIAMS,
Applicant,

v.

UNITED STATES OF AMERICA,
Respondent.

**APPLICATION FOR EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATE COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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To: Justice Brett Kavanaugh, Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

Pursuant to this Court’s Rules 13.5 and 22, Applicant Tyler G. Williams requests an extension of sixty (60) days within which to file a petition for a writ of certiorari seeking review of *United States v. Williams*, 39 F.4th 342 (6th Cir. 2022). The court of appeals issued its opinion on July 6, 2022, and denied a petition for rehearing on October 26, 2022. 2022 WL 17409565 (6th Cir. Oct. 26, 2022). Unless extended, a petition for a writ of certiorari would be due on January 24, 2023. With the requested extension, the petition would be due on March 27, 2023. This Court’s jurisdiction will be invoked under 28 U.S.C. § 1254(1). A copy of the court of appeals’ decision is attached as Appendix A and the order denying rehearing is attached as Appendix B. In accordance with this Court’s Rule 13.5, Applicant is filing this application at least ten days before the current due date.

1. This case involves a pressing constitutional question under the Armed Career Criminal Act (ACCA) that has arisen in the wake of *Wooden v. United States*, 142 S. Ct. 1063 (2002). The ACCA requires a minimum sentence of fifteen years of imprisonment—and permits a maximum of life—for a defendant convicted of unlawful possession of a firearm if the defendant has three qualifying prior convictions “committed on occasions different from one another.” 18 U.S.C. § 924(e)(1). This Court has held that “any fact,” “[o]ther than the fact of a prior

conviction, . . . that increases the penalty for a crime beyond the prescribed statutory maximum”—or that increases the mandatory minimum—“must be submitted to a jury, and proved beyond a reasonable doubt.” *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); see *Alleyne v. United States*, 570 U.S. 99 (2013) (applying *Apprendi* to mandatory minimums).

2. In *Wooden*, this Court held that the ACCA’s “on occasions different from one another” inquiry turns on whether prior crimes arose from the “same criminal episode”—a “multi-factored” inquiry that considers time, place, intervening events, and “the character and relationship of the offenses.” 142 S. Ct. at 1068, 1070-71. The underlying factual issues necessary to make that determination fall outside the “fact of a prior conviction” and thus squarely implicate the jury trial right. *Apprendi*, 530 U.S. at 490. *Wooden* reserved whether *Apprendi*’s principles apply to the occasions issue because the parties did not raise it. 142 S. Ct. at 1068 n.3.

3. Before *Wooden*, all of the courts of appeals that addressed the issue adopted the erroneous view that the occasions issue fell into the narrow exception to *Apprendi* permitting a court to find the fact of a prior conviction at sentencing. In this case, the court of appeals applied its pre-*Wooden* precedent treating the “occasions” inquiry as a matter for the judge at sentencing—thus depriving petitioner of the indictment and jury determination beyond a reasonable doubt to which he is entitled. And despite the government’s agreement that in light of *Wooden*, the occasions issue must be submitted to the jury, see U.S. Br. in Opp., *Reed v. United States*, No. 22-336 (filed Dec. 12, 2022), the courts of appeals have declined to revisit

their pre-*Wooden* precedent holding that a jury need not resolve ACCA's occasions question. This case falls into that pattern: the court of appeals denied petitioner's request for rehearing *en banc* seeking correction of its erroneous precedent.

4. This issue will persist until this Court definitively resolves it—and the need for this Court's intervention is all the more essential because ACCA defendants face unjustified years in prison while the lower courts refuse to accord them their constitutional rights. Applicant's petition will present this issue.

5. Good cause exists for an extension of time. Sup. Ct. R. 13.5. Undersigned *pro bono* counsel of record was only recently engaged to represent Applicant and will need additional time to become fully familiar with the record. The additional time is further necessary to allow Applicant adequate time to prepare the petition for certiorari. In addition, this Court's action on a pending certiorari petition raising the same issue, *see Reed v. United States*, No. 22-336 (distributed for conference of January 20, 2023), may affect the contents of this petition.

6. For the foregoing reasons, Applicant respectfully requests that this Court grant this application for an extension of time to file a petition for writ of certiorari and extend the time to and including March 27, 2023.

Respectfully submitted,

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January 13, 2023