

No. _____

IN THE
Supreme Court of the United States

DAMON L. BUFORD
Petitioner,

v.

UNITED STATES

**APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Brett M. Kavanaugh, Associate Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Petitioner Damon Buford respectfully requests a 59-day extension of time, to and including Friday, July 7, 2023, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Eighth Circuit issued its opinion on December 13, 2022. A copy of the opinion is attached as Exhibit A. The Eighth Circuit denied Petitioner's timely rehearing petition in an order issued on February 8, 2023. A copy of the order is attached as Exhibit B. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for writ of certiorari would be due on May 9, 2023. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case presents an important issue of federal sentencing law under the Armed Career Criminal Act (“ACCA”) reserved by this Court in *Wooden v. United States*, 142 S.Ct. 1063 (2022): “whether the Sixth Amendment requires that a jury, rather than a judge, resolve whether prior crimes occurred on a single occasion.” *Id.* at fn 1. In his concurring opinion, Justice Gorsuch opined that this Court should resolve this question “soon.” *Id.* at fn 7.

4. In petitioner’s case, the Eighth Circuit refused to reach the merits of petitioner’s argument that his ACCA sentence violated the Sixth Amendment based on its conclusion that “*Wooden* is not intervening precedent because the Court declined to weigh in on the Sixth Amendment question.” Exhibit A, pg. 4. The Eighth Circuit noted, in a paragraph of analysis, that petitioner’s argument failed under plain error review. *Id.*

5. On November 15, 2022, the Eighth Circuit granted rehearing en banc on this precise Sixth Amendment issue reserved by this Court in *Wooden*, and invited the parties to brief the issue of whether its prior law “conflicts with *Wooden*.” *United States v. Stowell*, 21-2234, judge order, issued February 23, 2023. In *Stowell*, the government conceded that the case should be reheard en banc because “the determination of whether a defendant’s ACCA predicates were committed on occasions different from one another must, under the Sixth Amendment, be made by a jury or admitted by the defendant.” *Stowell*, 21-2234, government’s response to

petition for rehearing en banc, pg. 1 (filed October 26, 2022). On April 11, 2023, the Eighth Circuit heard en banc oral argument on this issue. The Eighth Circuit, therefore, may significantly change and alter ACCA sentencing within that Circuit, where petitioner was sentenced to an ACCA sentence.

6. Mr. Buford timely sought rehearing or rehearing en banc, seeking reconsideration of the same question presented here. The Eighth Circuit denied rehearing by the panel, and rehearing en banc. See Exhibit B.

7. This case raises important concerns because hundreds of defendants are sentenced to an ACCA sentence every year. This case is an excellent vehicle to decide the Sixth Amendment issue reserved by this Court in *Wooden* because it may also address the important and reoccurring issue of how courts should resolve the Sixth Amendment issue on plain error review.

8. Petitioner respectfully requests an extension of time to file a petition for a writ of certiorari. Undersigned counsel has a number of pending matters with proximate due dates that will interfere with counsel's ability to file the petition on or before May 9, 2023. Specifically, counsel is currently preparing for an oral argument before the Eighth Circuit in *United States v. Bonilla*, 22-3006 on April 13th, and will be traveling from Kansas City to St. Louis to present that argument. Counsel has other briefing deadlines in the Eighth Circuit currently pending.

Wherefore, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including July 7, 2023.

Respectfully submitted,

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EXHIBIT A

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-1050

United States of America

Plaintiff - Appellee

v.

Damon L. Buford

Defendant - Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:19-cr-00264-HFS-1)

JUDGMENT

Before LOKEN, GRUENDER, and GRASZ, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

December 13, 2022

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

EXHIBIT B

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-1050

United States of America

Appellee

v.

Damon L. Buford

Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:19-cr-00264-HFS-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

February 08, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans