

In the Supreme Court of the United States

RUBEN AGUILERA, 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*

BRIEF FOR PETITIONER IN REPLY



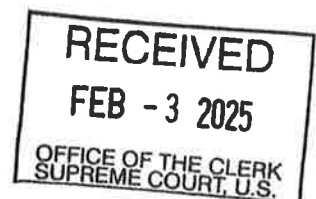
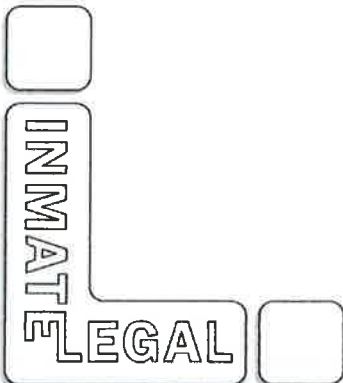
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ANALYSIS

Comes Ruben Aguilera, Petitioner (“Aguilera”), and submits this reply addressing the Government’s response.

I. Petitioner’s Claim is Colorable

The Petitioner submits he is entitled to a Certificate of Appealability (“COA”) because neither a jury found, nor did he concede, that his prior offenses were committed on occasions different from one another.¹ The Government raises two defenses, non-retroactivity and procedural default, which will be concisely addressed below.

a. The retroactivity of *Erlinger* (and, by extension, *Alleyne* and *Apprendi*) is ripe for review

First, the Government blanketly avers, without reference, that *Erlinger* is “not retroactively applicable to cases on collateral review.” [Gov’t Resp. at 8]. Indeed, this has never been found by this Court, nor has retroactivity ever been determined in this Court for *Apprendi*, 530 U.S. 466 (2000), and *Alleyne*, 570 U.S. 99 (2013), the cases from which the new right was established in *Erlinger*. Through the Government’s invite, the Petitioner submits his case presents an opportunity for the Court to resolve this long-outstanding issue.

While the Government contends otherwise, the Petitioner submits that *Erlinger* did, in fact, alter the “class of persons that the law punishes.” See *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004). Specifically, a conviction under the Armed Career Criminal Act (“ACCA”) is a separate statute that only becomes available when a defendant has three prior qualifying offenses. Lacking eligibility, a defendant cannot become a member of that “class of persons” thusly punished. Further, such a crime is not a mere enhancement, but a new crime in and of

¹The Government wrongly submits the district court “denied Petitioner’s motion [by] adhering to circuit precedent.” Gov’t Resp. at 7. Rather, as pointed out in the Petitioner’s certiorari, the district court relied on a non-published decision in denying relief.

itself – and one that shifts from a *maximum* penalty of 15 years of imprisonment to a *minimum* penalty of 15 years of imprisonment. These features support the claim that a conviction under ACCA creates a class of persons otherwise unreachable in successfully applying *Wooden* and *Erlinger*.

Further, the fact that the occasions clause now must be determined by a jury beyond a reasonable doubt, and not just by a preponderance of evidence, further supports this argument.

b. Petitioner has not procedurally defaulted his claim

Second, Petitioner has not procedurally defaulted his claim. Specifically, the holdings upon which he seeks relief came out, as the Government correctly provided, *after* his direct appeal. *See* Gov't Resp. at 5. Similar to this Court's logic in *Wright v. United States*, 580 U.S. 802, 137 S. Ct. 192 (2016), this Court has previously permitted Petitioners to avail themselves of Supreme Court holdings that come out after an appeal is concluded, even when those claims are not raised in the appellate court. The failure of the Petitioner to have pursued his claim while on direct appeal does not, therefore, foreclose his ability to avail himself of the holding in *Erlinger*.

Moreover, also like in *Wright* (where the Government failed to assert the appeal waiver), the Government failed to raise this issue of procedural default in the lower courts, this forfeiting this affirmative defense. *See Trest v. Cain*, 522 U.S. 87, 89, 118 S. Ct. 478, 480, 139 L.Ed.2d 444 (1997) (holding that procedural default is an affirmative defense). Consequently, the Petitioner has not procedurally defaulted this claim.

CONCLUSION

The Honorable Court is respectfully requested to grant certiorari and issue a certificate of appealability; or, in the alternative, grant this petition, vacate the court of appeal's denial, and remand this case back to the Fifth Circuit.

In light of the Government's invitation, the Petitioner respectfully requests this Court determine the retroactivity of *Erlinger*.

Respectfully Submitted,

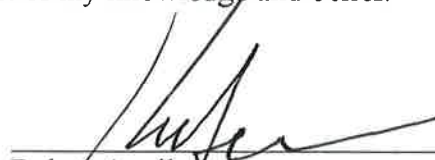


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DECLARATION

I, Ruben Aguilera, do hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 20th day of January, 2025.



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