

App. No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GERALD LYNN CAMPBELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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

Petitioner, Gerald Lynn Campbell, through counsel, respectfully requests a 60-day extension of time to file a petition for a writ of certiorari, up to and including Friday, July 18, 2025, pursuant to Supreme Court Rules 13.5 and 22. On February 19, 2025, the United States Court of Appeals for the Sixth Circuit denied Mr. Campbell's petition for rehearing en banc. *See* Appendix at 1. Absent an extension, his petition for a writ of certiorari would be due May 20, 2025. This application is timely as it is filed at least ten days before that deadline.

Mr. Campbell submits the following in support of his request:

1. Mr. Campbell pled guilty to possessing a firearm as a felon in violation of 18 U.S.C. § 922(g)(1). At the time of his offense, that crime carried a maximum penalty of 10 years' imprisonment. 18 U.S.C. § 924(a)(2) (2021). But the Armed Career Criminal Act, 18 U.S.C. § 924(e) ("ACCA"), established a 15-year mandatory minimum sentence for individuals with "three previous convictions" for "a violent felony or a serious drug offense," each committed "on occasions different from one another." 18 U.S.C. § 924(e)(1). In *Wooden v. United States*, 595 U.S. 360 (2022), this Court established a multi-factored, fact-laden test for determining whether prior offenses count as a single occasion, or multiple ones. *Wooden* was decided after Mr. Campbell pled guilty, but before his sentencing hearing.

2. At his sentencing hearing Mr. Campbell argued that under the combined reasoning of *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Wooden*, the occasions-different fact must be charged in the indictment and found by a jury beyond a reasonable doubt (or admitted by a defendant as part of his guilty plea). Because none of that occurred in his case, he argued that the district court could not sentence him under ACCA's enhanced statutory imprisonment range.

3. The district court disagreed, and decided the occasions-different fact itself, by a preponderance of evidence, at Mr. Campbell's sentencing hearing. It found that Mr. Campbell's prior offenses occurred on separate occasions and therefore applied ACCA's enhancement. It sentenced Mr. Campbell to 15 years' imprisonment, the mandatory minimum under ACCA.

4. On appeal, the government agreed that the new test set out in *Wooden* means that ACCA's occasions-different fact is an element that must be charged in an indictment and proven to a jury beyond a reasonable doubt. But the government also argued that the Sixth Circuit was nonetheless bound by its pre-*Wooden* case law, which allowed judges to make the occasions-different determination at sentencing by a mere preponderance of the evidence. The Sixth Circuit agreed with the government, found itself bound by circuit precedent that predated *Wooden*, and affirmed the district court's application of ACCA to Mr. Campbell.

5. He then filed a petition for rehearing en banc, but while that petition was pending this Court granted review in *Erlinger v. United States*, No. 23-370, to decide whether ACCA's occasions-different fact must be charged in an indictment and proven to a jury beyond a reasonable doubt (or admitted by a defendant as part of his guilty plea). Mr. Campbell's petition for rehearing was then held in abeyance.

6. After *Erlinger* was decided, the original Sixth Circuit panel issued an amended opinion, finding that there was *Erlinger* error in Mr. Campbell's case, but holding that *Erlinger* error is not structural, and that when applying harmless error review the Courts of Appeals can look to any information in the record, including documents presented only at sentencing where the Rules of Evidence do not apply. See Appendix at 2-17. Relying on documents never submitted to a jury, and in the absence of any admission by Mr. Campbell that his prior offenses qualify as different occasions for ACCA, the panel determined the *Erlinger* error in Mr. Campbell's case was harmless and affirmed his ACCA sentence. *Id.*

7. Mr. Campbell then renewed his request for rehearing en banc, which the Sixth Circuit denied on February 19, 2025. *Id.* at 1. The question(s) presented in Mr. Campbell’s petition for a writ of certiorari will concern the correct standard and scope of review of *Erlinger* error.

8. Good cause supports a 60-day extension. Since the lower court’s denial of en banc rehearing, undersigned counsel has handled an unusually heavy caseload, leaving insufficient time to properly prepare the petition. Accordingly, petitioner respectfully requests an order extending the deadline to file the petition for a writ of certiorari.

Mr. Campbell therefore asks this Court to extend the time to file a petition for a writ of certiorari in this appeal by 60 days, up to and including July 18, 2025.

Respectfully submitted,

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May 5, 2025.