

App. No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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MARQUISE GRAHAM,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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**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, Marquise Graham, by his counsel, respectfully requests pursuant to Supreme Court Rules 13.5 and 22 that the time for a petition for writ of certiorari in this matter be extended for 60 days to and including February 27, 2026. The United States Court of Appeals for the Sixth Circuit issued its judgment and unpublished opinion affirming the judgment in this case on September 29, 2025 (*see* Appendix). Mr. Graham's time to petition for writ of certiorari in this Court would therefore expire on December 29, 2026, absent an extension. Mr. Graham files this application at least ten days before that date, and supports his request as follows:

1. Mr. Graham pleaded guilty to the simple offense of being a felon in possession of a firearm, 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"), establishes 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 instead different ones.

2. At his sentencing hearing, held on June 28, 2023, Mr. Graham objected to the application of the ACCA based on the district court's factfinding that he previously committed three ACCA predicate offenses on different occasions. He argued that under the combined reasoning of *Wooden* and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the occasions-different fact must be charged in the indictment and found by a jury beyond a reasonable doubt (or admitted by him as part of his guilty plea). Because none of that occurred in his case, the district court could not sentence him for the greater ACCA offense, but only for the simple § 922(g) offense to which he pled guilty.

3. The district court disagreed, considering itself bound by precedent to decide the occasions-different fact for itself, by a preponderance of evidence. Concluding that Mr. Graham committed his prior offenses on different occasions,

the district court sentenced him to 192 months' imprisonment, within the advisory guideline range corresponding to the enhanced statutory range for the greater ACCA offense.

4. While Mr. Graham's case was on appeal, this Court decided *Erlinger v. United States*, 602 U.S. 821 (2024), in which it held that the ACCA's occasions-different fact must be charged in the indictment and proven to a jury beyond a reasonable doubt (or admitted by a defendant as part of his guilty plea). *Erlinger* thereby established the true relationship between the simple § 922(g) offense and the greater ACCA offense, and also that the district court erred in Mr. Graham's case.

5. In an unpublished decision, the Sixth Circuit affirmed. By this time, it was bound by new circuit precedent at every turn. It rejected Mr. Graham's argument that the *Erlinger* error was structural. (App. at 3-4.) See *United States v. Campbell*, 122 F.4th 624, 630-31 (6th Cir. 2024). Applying the standard it has adopted for harmless-error review in *Erlinger* appeals involving guilty pleas, which focuses on a hypothetical jury and hypothetical evidence, the panel determined that the error was harmless because it could "conclude beyond a reasonable doubt that the jury would have found the defendant's offenses occurred on different occasions." *United States v. Durham*, 151 F.4th 821, 825 (6th Cir. 2025) (per curiam). It also rejected, again relying on circuit precedent, Mr. Graham's argument that it could not rely on *Shepard* documents described in the Presentence Report to find the error harmless, but was instead limited to the record of the plea proceeding. The panel

held that the *Erlinger* error in Mr. Graham's case was harmless and affirmed the ACCA sentence. (App. at 6-7.)

6. The lower court also rejected Mr. Graham's separate double-jeopardy challenge to the district court's imposition of the ACCA punishment, even though had been charged with and pled guilty (with the government's consent) only to the simple § 922(g) offense. (App. at 8-9.) For this, the court relied on its precedential decision in *United States v. Thomas*, 37 F.4th 1190, 1194, 1198 (6th Cir. 2022).

7. Good cause supports granting an extension of time. In the time since the lower court issued its judgment, undersigned counsel has been responsible for a large number of briefs and other filings. Despite due diligence on the part of counsel, the press of these and other responsibilities past and upcoming has left insufficient time in which to prepare the petition.

Mr. Graham 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 February 27, 2026.

Respectfully submitted,

s/ Jennifer Niles Coffin  
Jennifer Niles Coffin  
Appellate Chief  
Federal Defender Services of  
Eastern Tennessee, Inc.  
800 South Gay St., Suite 2400  
Knoxville, Tennessee 37929  
(865) 637-7979  
jennifer\_coffin@fd.org

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