No. 25-

IN THE

Supreme Court of the United States

ELIAS PHILLIP FRANCIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

A. WHETHER THE CIRCUIT COURT PROPERLY APPLIED HARMLESS ERROR REVIEW AFTER MR. FRANCIS' DUE PROCESS RIGHT TO HAVE THE DIFFERENT OCCASIONS QUESTION RESOLVED BY A UNANIMOUS JURY BEYOND A REASONABLE DOUBT WAS VIOLATED.

LIST OF PARTIES

ELIAS PHILLIP FRANCIS, Petitioner

UNITED STATES OF AMERICA, Respondent

STATEMENT OF RELATED CASES

United States v. Elias Phillip Francis, Western District of North Carolina (Charlotte), Docket No.: 3:19-cr-00303-RJC-DCK-1. Judgment entered on August 3, 2021.

United States v. Francis, No. 21-4392, 2026 WL 115203 (4th Cir. 2026).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Elias Phillip Francis respectfully prays for a writ of certiorari to review the decision and judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The decision of the Fourth Circuit Court of Appeals affirming the judgment entered against Mr. Francis is reported at *United States v. Elias Francis*, 2026 WL 115203 (4th Cir., January 15, 2026)(Unpublished). (App A).

JURISDICTION

The United States Court of Appeals for the Fourth Circuit released an unpublished decision in the Petitioner's direct appeal on January 15, 2026. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1), and this Petition is timely filed within ninety days of the underlying Judgment of the Fourth Circuit (App B) pursuant to United States Supreme Court Rule 13(1) and 28 U.S.C. § 2101.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Fifth Amendment:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution, Sixth Amendment:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

On July 22, 2019, a Mint Hill (North Carolina) officer initiated a traffic stop after seeing an expired license plate on a Chevrolet leaving a gas station. Upon approaching the vehicle, the officer found Elias Philip Francis in the driver's seat and believed that he might have a weapon. The officer instructed him to show his hands and Mr. Francis sped off. The ensuing chase took more than 4 miles and reached speeds of over 120 miles per hour. The chase ultimately ended after crashing into an open field. After removing Mr. Francis from the car, officers found a loaded Smith and Wesson M&P .40 caliber pistol. The firearm had previously been reported stolen to Charlotte-Mecklenburg Police in 2018.

A federal grand jury issued a one-count Indictment on October 16, 2019, charging Mr. Francis with Possession of a Firearm by a Convicted Felon in violation of 18 U.S.C. 922(g)(1). Mr. Francis entered a plea of guilty without a written plea agreement on February 6, 2020. During that plea hearing, the Assistant United States Attorney informed Mr. Francis – per Magistrate Judge David Cayer's request – that he was pleading to an offense for which the maximum sentenced was "a term of imprisonment of ten years" but that if found to be an armed career criminal "the minimum term of imprisonment would be 15 years."

Judge Robert J. Conrad, Jr. conducted a sentencing hearing on July 27, 2021. Prior to the sentencing hearing the probation office prepared a

presentence investigation report. The report included a finding that Mr. Francis had "at least three prior convictions for a violent felony…or serious drug offense, or both, which were committed on different occasions" making him subject to sentencing as an armed career criminal. That determination had the effect of recommending a mandatory minimum sentence pursuant to the Armed Career Criminal Act of fifteen years.

During the sentencing hearing Mr. Francis strenuously objected to Armed Career Criminal status arguing that the enhancement "demands proof of multiple criminal episodes which must be alleged in the indictment, resolved by a jury, and proven by (beyond) a reasonable doubt." Judge Conrad overruled that objection and used the recommended sentencing level of 30 along with a criminal history category V to determine a guideline sentencing range of 180 to 188 months. Based on that range, the court imposed a judgment of 180 months (the mandatory minimum) to be followed by supervised release for a term of 2 years.

Mr. Francis entered notice of appeal on August 3, 2021. The Circuit Court held the direct appeal in abeyance for resolution of *Erlinger v. United States*, 602 U.S. 821, 144 S.Ct. 1840, 219 L.Ed.2d 451 (2024) and then *United States v. Brown*, 136 F.4th 87 (4th Cir. 2025), *cert denied*, No. 25-5743, 2025 WL 3131959 (U.S. Nov. 10, 2025). The Circuit Court affirmed Mr. Francis' direct appeal by an unpublished per curiam decision. The *Francis* Court stated that while the *Erlinger* Court held that the facts related to the different

occasions must be resolved by a unanimous jury the district court's error in Mr. Francis' case was harmless error. The Court's ruling of harmless error was based upon Mr. Francis not moving to withdraw his guilty plea, not disputing the accuracy of the presentence investigation report, and the strength of the evidence against him.

REASONS FOR GRANTING THE WRIT

Petitioner asserts that the writ should be issued because the district court's error was not harmless. Elias Francis pleaded guilty to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). During sentencing, Judge Conrad found Mr. Francis had at least three prior convictions on separate occasions making him eligible for an enhanced sentence under the Armed Career Criminal Act (ACCA) leading to an offense level of 33 pursuant to U.S.S.G. § 4B1.4(b). Mr. Francis objected to using those convictions to impose a mandatory minimum sentence because "the enhancement demands proof of multiple criminal episodes which must be alleged in the indictment, resolved by a jury, and proven by (beyond) a reasonable doubt."

Judge Conrad overruled Mr. Francis' objection based on then-existing Circuit case law, saying, "But the law, as I know it today, at this hearing, is otherwise, and I'm going to overrule your objection." On appeal, the Circuit Court knew this Court's ruling in *Erlinger v. United States*, 602 U.S. 821, 144 S.Ct. 1840, 219 L.Ed.2d 451, 2024 WL 3074427 (2024). The Court noted that "facts relating to the different occasions question 'must be resolved by a unanimous jury beyond a doubt (or freely admitted in a guilty plea).'" *Francis*, *Id., quoting*, *Erlanger*, 602 U.S. at 834.

In *Erlinger* the Court looked at the question "whether a judge may decide that a defendant's past offenses were committed on separate occasions under a preponderance-of-the-evidence standard, or whether the Fifth and

Sixth Amendments require a unanimous jury to make that determination beyond a reasonable doubt." *Id*., 144 S.Ct. at 1846.

The *Erlinger* Court stated that the "Fifth and Sixth Amendments placed the jury at the heart of our criminal justice system. From the start, those provisions were understood to require the government to include in its criminal charges 'all the facts and circumstances which constitute the offense.'" *Id*., 144 S.Ct. at 1849, *quoting*, *Apprendi v. New Jersey*, 530 U.S. 466, 478, 120 S.Ct. 2348, 2348, 204 L.Ed.2d 897 (2019). As a result, "there is no doubt what the Constitution requires in these circumstances: Virtually, 'any fact' that 'increase[s] the prescribed range of penalties to which a criminal defendant is exposed' must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea). *Erlinger*, 144 S.Ct. at 1851, *quoting*, *Apprendi*, *supra*, 530 U.S. at 490, 120 S.Ct. at 2348. Looking historically the Court also saw that even with statutes giving judges discretion to select among sentences, "'the ranges themselves were linked to particular facts' found by the jury." *Erlinger*, 144 S.Ct. at 1850, *quoting*, *Alleyne v. United States*, 570 U.S. 99, 109, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013). *Alleyne* applied in the context of mandatory minimum sentences by guaranteeing that a judge cannot use anything which increases the sentence "above what the law…provided for the acts found by a jury of the defendant's peers." *United States v. Haymond*, 588 U.S. 634, 642, 139 S.Ct. 2369, 204 L.Ed.2d 897 (2019).

"Judges may not assume the jury's factfinding function for themselves, let alone purport to perform it using a mere preponderance-of-the-evidence standard. To hold otherwise…would intrude on a power the Fifth and Sixth Amendments reserve to the American people." *Erlinger*, 144 S.Ct. at 1851-52. The Court was very clear that a sentencing judge could not undertake an ACCA inquiry "with an eye toward increasing his punishment. The Fifth and Sixth Amendments 'contemplat[e] that a jury – not a sentencing court – will find such facts, unanimously and beyond a reasonable doubt.'" *Erlinger*, 144 S.Ct. at 1855, *quoting*, *Descamps v. United States*, 570 U.S. 254, 269, 133 S.Ct. 2276, 186 L.Ed.2d 438 (2013). Further, the Court at Footnote 3 maintained that as "the Court has said before and we hold again today: '[A] judge cannot go beyond identifying the crime of conviction to explore the manner in which the defendant committed that offense…He can do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant was convicted of.'" *Id*, *quoting*, *Mathis v. United States*, 579 U.S. 500, 511-12, 136 S.Ct. 2243, 195 L.Ed.2d 604 (2016).

Despite that history, the Circuit Court provided Mr. Francis no relief, holding that the *Erlinger* error was harmless as it had also in *United States v. Brown*, 136 F.4th 87 (4th Cir. 2025). This Court has held that errors – even of a Constitutional magnitude – can be suitable for harmless error review. *See*, *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). However, this Court has not determined that an *Erlinger* error is categorically

subject to harmless error review. Furthermore, in assessing *Erlinger* errors, different Circuits have now adopted different tests. While the Fourth Circuit considers whether a defendant would have rationally rejected a guilty plea, the Eleventh Circuit looks at the entire record to see if the error affected substantial rights. *See*, *United States v. Rivers*, 134 F.4th 1292 (11th Cir. 2025)("Just like the errors in *Apprendi* and *Alleyne*, *Erlinger* error is not structural because it does not render the defendant's trial 'fundamentally unfair or an unreliable vehicle for determining guilt or innocence.'" *Rivers*, *supra*, at 1305-06, *quoting*, *Neder v. United States*, 527 U.S. 1, 9, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999).

The Fifth Circuit focuses on whether a rational jury would have found the different occasions element. *See*, *United States v. Butler*, 122 F.4th 584, 586 (5th Cir. 2024). Conversely, the Seventh Circuit holds that "a failure to submit a sentencing factor to a jury is harmless only if it is 'clear beyond a reasonable doubt' that a properly instructed jury would have found the same facts as the court." *United States v. Johnson*, 114 F.4th 913, 917 (7th Cir. 2024), *citing*, *United States v. Hollingsworth*, 495 F.3d 795, 806 (7th Cir. 2007).

In addition to the vast discrepancies in how and when harmless error should apply, the Circuit Court in the matter at bar erred in applying the harmless error standard from *Brown*, *supra*, to Mr. Francis' case. First, the Court said harmless error applied because Mr. Francis raised the issue at sentencing rather than moving to withdraw his guilty plea. But the ACCA

enhancement was appropriately raised at sentencing because logically, a defendant making a sentencing request does not necessarily want to go back and deny guilt for an offense to which he already admitted guilt. The two phases of the proceeding simply are not necessarily connected in that way, and doing so could substantially change the sentencing calculations. Secondly, and more importantly, a defendant's belief in the strength or weakness of sentencing factors should not dictate whether the district court has to comply with Constitutional requirements.

Here, Judge Conrad assumed what was the jury's factfinding function for himself. Judge Conrad violated Mr. Francis' rights. The only way to correct this grave Constitutional violation is to reverse the Court of Appeals' decision and, ultimately, remand the matter to the district court.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully submits that his Petition for Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4392

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ELIAS PHILLIP FRANCIS,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert J. Conrad, Jr., District Judge. (3:19-cr-00303-RJC-DCK-1)

Submitted: December 18, 2025 Decided: January 15, 2026

Before NIEMEYER, AGEE, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Steven T. Meier, STEVEN T. MEIER, PLLC, Charlotte, North Carolina, for Appellant. Russ Ferguson, United States Attorney, Amy E. Ray, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

After Elias Phillip Francis pled guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), the district court determined that he had three prior convictions for violent felonies committed on occasions different from one another, thus qualifying him for a sentencing enhancement under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(1). The court sentenced Francis to 180 months' imprisonment—the mandatory minimum prison term under the ACCA. Francis appeals his sentence, arguing that it was improper for the district court to decide whether his three ACCA predicates were committed on different occasions. We held this case in abeyance for *Erlinger v. United States*, 602 U.S. 821 (2024), and *United States v. Brown*, 136 F.4th 87 (4th Cir.), *cert. denied*, No. 25-5743, 2025 WL 3131959 (U.S. Nov. 10, 2025). Considering *Erlinger* and our decision in *Brown*, we conclude that the district court erred, but that the error is harmless. We therefore affirm.

The ACCA enhancement applies if a defendant convicted of a § 922(g) offense "has three previous convictions . . . for a violent felony or a serious drug offense, or both, committed on occasions different from one another." 18 U.S.C. § 924(e)(1). In *Erlinger*, the Supreme Court held that the facts relating to the different occasions question "must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)." 602 U.S. at 834. Thus, a district court errs by deciding the different occasions issue at sentencing. *Id.* at 838-39. But so-called "*Erlinger* errors" are subject to harmless error review. *Brown*, 136 F.4th at 92-96. Where, as here, the defendant was convicted after pleading guilty, the Government establishes that an *Erlinger* error is harmless by showing

beyond a reasonable doubt that if the defendant "had been correctly advised at his plea hearing that he was entitled to have a jury resolve [the different occasions issue] unanimously and beyond a reasonable doubt, he would have nonetheless waived that right and admitted as part of his guilty plea that his prior offenses were committed on different occasions." *Id.* at 97 (citation modified). In concluding that the *Erlinger* error in *Brown* was harmless, this court noted that "Brown chose to plead guilty to the firearm-possession offense *after* having been twice informed that [the] ACCA's mandatory minimum of 15 years and its maximum of life would apply if the judge found its requirements satisfied." *Id.* at 98. And although Brown raised the different occasions issue at sentencing, he did not seek to withdraw his guilty plea. *Id.* Moreover, Brown did not contest the accuracy of his presentence report (PSR), even though the facts alleged therein provided the basis for the district court's different occasions finding. *Id.*

Francis' case, we conclude, is on all fours with *Brown*. First, at the guilty plea hearing, Francis was informed of the possible ACCA enhancement, and he confirmed to the magistrate judge that he understood the maximum and minimum prison terms he faced if the district court were to determine that the ACCA applied. Second, although Francis raised the different occasions issue at sentencing, he did not move to withdraw his guilty plea. And third, Francis did not dispute the accuracy of the criminal history information in his PSR that provided the basis for the district court's different occasions finding.

Finally, in *Brown*, this court recognized an inverse relationship between the strength of the evidence supporting the ACCA enhancement and the likelihood that a defendant would forgo the benefits of pleading guilty for the opportunity to have a jury decide the

different occasions issue. 136 F.4th at 99. There, the evidence supporting Brown's ACCA enhancement was exceptionally strong. *Id.* at 98. Thus, "given that the possibility of a favorable verdict on the different occasions issue would have been so exceedingly remote as to be practically irrelevant, we [could not] fathom that Brown would have traded the benefit of pleading guilty for such long odds." *Id.* at 99.

So too, here. "[T]he word 'occasion' in [the] ACCA should be given its 'ordinary meaning'—that is, 'essentially an episode or event.'" *Id.* (quoting *Wooden v. United States*, 595 U.S. 360, 366 (2022)). In this case, the PSR established that each of Francis' ACCA predicates was perpetrated against a different victim and several months apart from each other. Specifically, the PSR established that Francis' predicate offenses occurred in October 2016, February 2017, and September 2017. In our view, this evidence leaves "no doubt that [Francis] would have pleaded guilty if the indictment had alleged that he committed his prior [offenses] on three different occasions and if he had been informed that he was entitled to have a jury find that fact beyond a reasonable doubt." *Id.*

We therefore conclude that the *Erlinger* error in this case is harmless. Accordingly, we affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED